

## **Mediation Training and the Law School Experience**

### **FINAL REPORT**

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## EXECUTIVE SUMMARY

In March of 2018, Deborah Malizia and Dr. Jessica Jameson published an article in *Conflict Resolution Quarterly* entitled “Hidden in plain view: The impact of mediation on the mediator and implications for conflict resolution education.” The article describes the authors’ contention that training in mediation skills would help address many of the mental health challenges confronting law students and practicing attorneys because knowledge, understanding, and application of the skills used by mediators to help disputants resolve conflict (i.e., emotional intelligence and communication skills such as active listening, perspective-taking, reframing, emotion recognition and regulation, empathy, and impartiality) lead to enhanced mental health and well-being. The study we describe here was designed to investigate the impact of mediation training on law students enrolled in a mediation skills training course and on professionals who had taken mediation training in school or at some point during their career.

A survey instrument was developed to assess law students’ mental health and well-being (measured by well-tested and widely used scales for autonomy, flourishing, positive relations with others, self-compassion, subjective happiness, and depression, anxiety, and stress) as well as their proficiency using a series of mediation skills (measured by well-tested and widely used scales for cognitive flexibility, emotion regulation, empathy, and perspective-taking) at the beginning and ending of one academic semester. Surveys were collected from law students enrolled in a mediation skills training course and from a control group of law students not enrolled in such a course. Participants included 40 students at 5 law schools in Fall of 2018 and 45 students at 5 law schools in Spring of 2019. Survey participants also answered an open-ended question asking how their perspective or mindset had changed since they started law school (Fall survey) or over the length of the semester (Spring survey). Students in a mediation course also responded to online prompts during the semester asking what they had learned in their mediation course and whether they had applied what they had learned to their daily interactions.

Survey results for the Fall semester provided support, including a number of statistically significant findings, for our contention that mediation skills training will have a positive impact on the mental health and well-being of students enrolled in a mediation training course. Specifically, with respect to mediation students, the data showed increases over the semester in their mean scores for the mental health and well-being scales of flourishing, positive relations with others, and self-compassion as well as for the mediation skills measures of cognitive flexibility, perspective taking, and emotional regulation through cognitive reappraisal. This is in contrast to the Fall data from students in the control group, which showed decreases over the length of the semester in the mean scores for those same mental health and well-being scales as well as for the mediation skills measures of cognitive flexibility, emotion regulation through cognitive reappraisal, and empathy. While all law students reported an increase in depression, anxiety, and stress at the end of the semester, these scores were higher (worse) for control group students than for mediation group students. The Spring survey sample generated different results from those of the Fall sample, including fewer statistically significant findings than were generated by the Fall survey and findings we would not have predicted. In many cases, the control group scores were roughly the same on the initial and final surveys and in some cases slightly improved over the semester, while in several cases the mediation group scores worsened.

With regard to the open-ended question and the online prompts (qualitative data), many mediation students reported improved communication skills (such as active listening, asking insightful questions, and understanding underlying interests), increased emotional understanding of self and other, and increased mental health and well-being. Control group student responses generally reported less change in communication skills and decreases in emotional well-being (again, the difference was more pronounced in the Fall than in the Spring sample). Nearly 100% of mediation student participants reported that they learned important communication skills during the semester and that they applied those skills in their interactions with family, friends, and classmates.

Because the full impact of any specific course may take some years to emerge, in order to complement the data collected over the one-semester survey period, the authors conducted interviews with 14 professionals who had participated in mediation skills training at some point during their education or professional careers. Interviewees were asked to describe how mediation training had impacted them, how they thought mediation training might impact law students, and whether they believed mediation training should be more widely integrated into the law school curriculum.

Interview responses supported the argument that mediation skills training is related to mental health and well-being (also referred to as emotional well-being). Participants described numerous professional and personal benefits of mediation training, including improved relations with clients, family, and friends, increased ability to manage one's own conflicts, improved interpersonal communication and problem-solving skills, increased job performance, and greater job and life satisfaction. Interviewees agreed that these outcomes would benefit law students by improving their emotional well-being and professionalism, enhancing their communication and negotiation skills, making them better advocates for their clients in mediation, and enhancing their job prospects. Many interviewees reported their perception that practicing attorneys who also conduct mediation were more satisfied, less stressed, and generally healthier than those who do not mediate. Interview participants suggested that it would be beneficial to integrate mediation training more widely into the law school curriculum, whether through a specific mediation skills training course or by classroom discussion, during case law analysis, of mediation as an alternative to litigation.

While a multi-year, longitudinal study of law students and young lawyers is needed to conduct a more robust investigation of how mediation skills training impacts law student and attorney emotional well-being, this study provides numerous quantitative indicators from the Fall survey data and substantial qualitative evidence of a positive connection between mediation skills training and emotional well-being. Specifically, the cumulative results of this research illustrate the potential of mediation skills training to increase the professionalism of law students while simultaneously helping to mitigate the negative effects of law school on students' mental health and well-being. Accordingly, law schools are advised to consider giving more attention to mediation training education.

## Study Rationale & Research Questions

A landmark study released in February 2016 and conducted by the American Bar Association, in collaboration with the Hazelden Betty Ford Foundation, documented serious mental health problems within the legal profession. Specifically, the study concluded that alarming rates of depression, anxiety, stress, and alcohol/substance abuse exist among lawyers -- in fact, higher rates than indicated by previous studies. The findings show that lawyers in their first ten years of practice have the highest incidence of these problems. As the lead author stated in a press briefing about the study, “the stakes are too high for inaction” for both the lawyer population and society in general, given the important role of lawyers in government, business, and civil society.

It is our contention that training and practice in mediation skills would help address many of the mental health challenges confronting law students and practicing attorneys because knowledge, understanding, and application of the skills used by mediators to help disputants resolve conflict (i.e., emotional intelligence and communication skills such as active listening, perspective-taking, reframing, emotion recognition and regulation, empathy, and impartiality) lead to enhanced emotional well-being. This contention was originally based on the personal experiences of mediators we spoke with informally, empirical data from K-12 peer mediation programs, theoretical support from neuroscience, and research on social-emotional learning and other practices that include skills used in mediation (see attached copy of our article, “Hidden in plain view: The impact of mediation on the mediator and implications for conflict resolution education”, published in the March 2018 edition of *Conflict Resolution Quarterly*).

To explore the relationship between mediation training/practice and emotional well-being, we designed a study to investigate the impact of mediation training and practice on law students enrolled in a mediation skills training course as well as on professionals who had taken mediation training in school or at some point during their career. Specifically, we gathered both quantitative and qualitative empirical data to answer the following questions:

Research Question 1: Do law students enrolled in a one-semester course in mediation skills training report enhanced emotional well-being and/or changes in their perspective or behavior at the end of the semester?

Research Question 2: Do law students enrolled in a one-semester course in mediation skills training report increased knowledge of mediation skills [particularly, those of Cognitive Flexibility, Empathy, Emotion Regulation, and Perspective-Taking] at the end of the semester?

Research Question 3: Do law students enrolled in a one-semester course in mediation skills training report the application of mediation skills they learned during the course to daily life interactions?

Research Question 4: Do attorneys or other professionals who have taken mediation skills training, including instructors who teach mediation skills training in law, undergraduate, or graduate school and attorneys who conduct mediation (hereafter, mediation-trained professionals) report that mediation skills training/practice/teaching has had an impact on (a) their professional work, (b) their professional and/or personal relationships, and/or (c) their emotional well-being and, if so, in what ways?

Research Question 5: What, if any, are (a) the potential benefits that mediation-trained professionals believe law students stand to gain from taking mediation skills training and (b) the actual benefits that instructors who teach mediation skills training in law, undergraduate, or graduate school have observed their students gain as a result of the training?

Research Question 6: What differences, if any, do mediation-trained professionals perceive between attorneys who exclusively practice law and those who also conduct mediation?

Research Question 7: Do mediation-trained professionals believe that mediation skills training should be more widely integrated into the law school curriculum and, if so, how?

Research Question 8: What do mediation-trained professionals perceive as the greatest obstacles to widespread integration of mediation skills training into the law school curriculum?

### **Research Design**

The research questions presented above were addressed with two different research methods. We utilized a survey instrument to compare responses of law students enrolled in a mediation skills training course with the responses of law students who were not enrolled in a mediation skills training course. The survey specifically measured indices of emotional well-being as well as of mediation skills at the beginning and end of one semester. We also conducted in-depth interviews with attorneys and other professionals who had taken mediation skills training in school or at some point during their career, including law, undergraduate, and graduate school mediation training instructors, to obtain their perspectives on the impact mediation skills training has had on them and on their students. The section below describes the survey and its results, which provide insights into Research Questions 1 through 3. In the subsequent section we describe the interview procedures and results, which provide insights into Research Questions 4 through 8.

### **Research Method 1: Survey Description and Results**

#### Survey Sample & Participants

Our survey research population consisted of law students at ABA-approved law schools that offer at least one course in mediation skills training that includes practice in the form of role plays, simulations, or actual mediation under supervision. Participants comprised two groups of law students: (1) law students who were currently enrolled in a mediation skills training course (the treatment group); and (2) law students who were not currently enrolled in a mediation skills training course and who had never taken mediation skills training (the control group). To be eligible to participate, students had to be enrolled in their second or third year of a juris doctor program.

#### Survey Design

The survey was a self-report instrument that included questions related to emotional well-being and key mediator skills, as well as demographic questions. The purpose of the survey was to measure change in law student respondents' emotional well-being and mediation skills over one semester. For the Fall phase of the study, emotional well-being was measured using six publicly available, validated scales: autonomy, flourishing, positive relations with others, self-compassion, subjective happiness, and DASS-21 (the depression, anxiety, and stress scale used in the aforementioned 2016 study by the ABA and Hazelden Betty Ford Foundation). Mediation skills were measured using four publicly available, validated scales: cognitive flexibility, emotion regulation, empathy, and perspective-taking. After analyzing results from the Fall study, two of these scales (the autonomy scale and the subjective happiness scale) did not appear to add value to our measure of emotional well-being and we decided to eliminate them from the Spring 2019 phase of data collection in order to shorten the survey and potentially increase the participation rate.

See Table 1 for the name and description of each scale we used to measure change in emotional well-being and mediation skills over one semester. See Figure One for a depiction of the theory of change model that guided our study design.

**Table 1: Survey Scales and Descriptions**

<b>Mental Health &amp; Well-Being Scale</b>	<b>Description of Scale</b>
Autonomy	Ryff's Scales of Psychological Well-Being (1989, 2007). "Self-determining and independent; able to resist social pressures to think and act in certain ways; regulates behavior from within; evaluates self by personal standards."
Flourishing	Flourishing Scale (Diener et al., 2009). "Self-perceived success in important areas such as relationships, self-esteem, purpose, and optimism."
Positive Relations With Others	Ryff's Scales of Psychological Well-Being (1989, 2007). "Has warm, satisfying, trusting relationships with others; is concerned about the welfare of others; capable of strong empathy, affection, and intimacy; understands give and take of human relationships."
Self-compassion	Self-Compassion Scale (Neff, 2003). "Being kind and understanding toward oneself in instances of pain or failure rather than being harshly self-critical; perceiving one's experiences as part of the larger human experience rather than seeing them as isolating; and holding painful thoughts and feelings in mindful awareness rather than over-identifying with them."
Subjective Happiness	Subjective Happiness Scale (Lyubomirsky & Lepper, 1999). "A global, subjective assessment of whether one is a happy or unhappy person."
Depression, Anxiety, Stress	DASS-21 (Lovibond & Lovibond, 1995). "The depression scale assesses dysphoria, hopelessness, devaluation of life, self-deprecation, lack of interest / involvement, anhedonia, and inertia. The anxiety scale assesses autonomic arousal, skeletal muscle effects, situational anxiety, and subjective experience of anxious affect. The stress scale is sensitive to levels of chronic non-specific arousal. It assesses difficulty relaxing, nervous arousal, and being easily upset / agitated, irritable/over-reactive and impatient."
<b>Mediation Skills Scale</b>	<b>Description of Scale</b>
Cognitive Flexibility	Cognitive Flexibility Inventory (Dennis & Vander Wal, 2010). Self-reported ability "to successfully challenge and replace maladaptive thoughts with more balanced and adaptive thinking. It was designed to measure three aspects of cognitive flexibility: (a) the tendency to perceive difficult situations as controllable; (b) the ability to perceive multiple alternative explanations for life occurrences and human behavior; and (c) the ability to generate multiple alternative solutions to difficult situations."
Emotion Regulation	Emotion Regulation Questionnaire (ERQ) (Gross & John, 2003). Measures two ways of regulating emotion: (1) cognitive reappraisal, which involves "controlling attention to and cognitively changing the meaning of emotionally evocative stimuli"; and (2) expressive suppression, which involves "people keeping their emotions from showing during social interactions." It is noteworthy that the latter form of emotion regulation has been found to "disrupt communication and increase stress."
Empathy	Toronto Empathy Questionnaire (Spreng et al., 2009). Emphasizes empathy as an emotional process, "an accurate affective insight into the feeling state of another."
Perspective-taking	Perspective Taking Multidimensional Scale (Williams, 2012). We used the three-items that measure affective perspective-taking, defined as "the intrapsychic process of imagining another's feelings from that person's point of view."

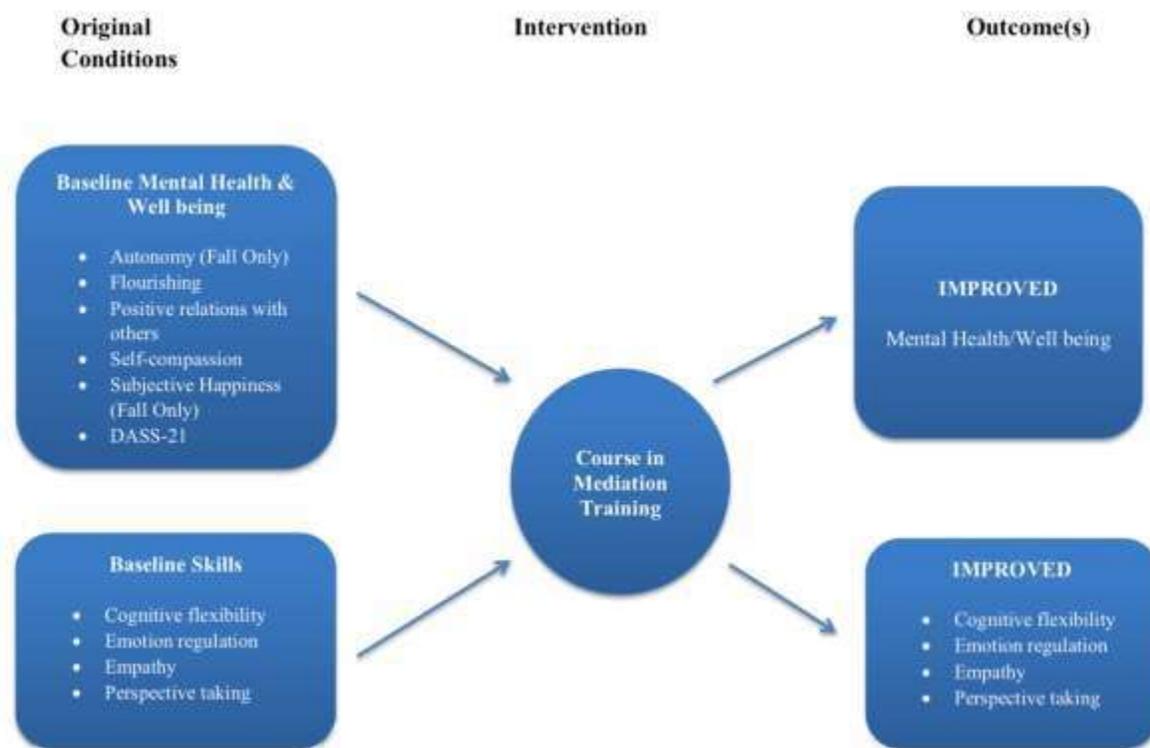


Figure One: Theory of Change Model

### Data Collection Procedures

We received IRB approval from North Carolina State University in Summer 2018 to conduct a year-long study including dissemination of a survey at the beginning and end of the Fall 2018 semester and the Spring 2019 semester as well as collection of qualitative data from law students during each semester. In Fall 2018, we disseminated a 20-minute online survey to students at five law schools (names not included to protect confidentiality). A solicitation email that contained a link to the survey was sent to faculty instructors, who then sent the email to their students. The email assured students that their instructors would neither see the data nor be privy to who participated in the study. In some cases, students were given class time to complete the survey, which we found to be the most successful way to ensure student participation. In order to protect confidentiality, participants were asked to create a unique identifier (UI) consisting of the first two letters of their place of birth (city or town) and the last four digits of their phone number. The UI allowed us to match the end of the semester (post-test) survey with the beginning of the semester (pre-test) survey taken by the same student. The pre-test survey was completed within the first month of the semester for 4 out of the 5 participating schools; one school completed the pre-test survey at the end of the second month. The post-test survey was distributed starting two weeks before the end of the semester and was open through the first week of January 2019.

In Spring 2019, we followed the same procedure with 5 law schools (one of which was also included in the Fall sample). All participating schools in the Spring semester distributed the pre-test survey to their law students in the first two weeks of classes and the post-test survey approximately two weeks before the end of the semester.

During the survey period, we also collected qualitative data in two ways: through an online prompt that we only sent to mediation students and through an open-ended question at the end of the post-test survey for all participants. The online prompts asked mediation students to describe any mediation concepts/skills they had learned in their mediation class that week and subsequently applied or related to something they read, saw on television, or experienced during an interpersonal interaction in their daily lives. The study investigators had a list of student email addresses for each participating mediation course and sent an email to all mediation students each Thursday afternoon for nine weeks during the Fall semester. Students were asked to respond to the mediation prompt by the following Sunday at midnight. On several occasions a second email was sent Sunday asking students to please complete the prompt by the following Tuesday. The class instructors did not have access to these responses and did not know which students responded to the online prompts. Due to the relatively low response to the online prompts in the Fall, we revised this data collection process for the Spring phase with the intent of minimizing the response burden and increasing the response rate. At mid-semester the Spring students received one online prompt as opposed to the weekly prompts used in the Fall.

The open-ended question on the post-test survey was completed by students in both the mediation and control groups in the Fall and Spring. The Fall survey question read:

Many people who have attended law school perceive that the law school experience changes them in some way. As the final question of the survey, please describe any ways you perceive that your perspective or mindset has changed since you started law school.

Upon reflection, we realized that we were mostly interested in how law students who took a mediation course may have changed as a result of their mediation training (as compared to students who had not taken mediation training). We therefore revised the open-ended question in the Spring survey to read:

Please describe any ways, either large or small, that your perspective, mindset, or behavior has changed since the beginning of this semester. (For example, in the context of your self-awareness and/or your relationship with others.)

These qualitative responses were examined to supplement and provide more context to the quantitative survey data.

## **Survey Analysis & Results**

### Survey Sample and Demographic Distribution

In Fall 2018, we had a total of 40 usable matching pre- and post-tests. Of these, 27 were in the mediation group and 13 were in the control group. These students came from 5 law schools in different parts of the US. In Spring 2019, we collected an additional 45 matching surveys from 24 students in the mediation group and 21 students in the control group. These students also came from 5 law schools, one of which was included in the Fall 2018 sample. Tables 2 and 3 provide an overview of the survey sample and demographic characteristics.

### Quantitative Data Analysis and Results – Fall 2018 Semester

To begin our analysis, we used *t*-tests to compare pre- and post-test survey scores with respect to each measurement scale, for both the mediation group and the control group, in order to identify statistically significant change in the scores for each group over the semester. Below, we discuss change during the Fall semester for the mediation students, followed by change for the control group students, and then we compare results across the two groups.

**Table 2: Demographic breakdown of Fall 2018 sample by condition (group), year in law school, age, school, gender, and race/ethnicity**

Condition (Group)	Year in Law School	Age range	Law School	Gender	Race/Ethnicity
Mediation: 27	2L: 19	21-25: 19	School 1: 12	M: 16	Caucasian/White: 24
Control: 13	3L: 21	26-30: 17	School 2: 4	F: 24	African American/Black: 4
		31-43: 4	School 3: 7		Hispanic: 4
			School 4: 8		Asian: 4
			School 5: 9		No answer or other: 4

Note: ( $n = 40$ ). Table reads top to bottom as independent columns (each column accounts for the 40 students in the sample); not across the rows

The mediation students' scores showed a statistically significant difference (at the .05 level) in the mean (average) score between pre-test and post-test for the emotional well-being scale 'positive relations with others.' Importantly, this difference reflected an increase in mediation student scores over the course of the semester, supporting our prediction that mediation skills training would have a positive impact on the emotional well-being of students enrolled in a mediation training course. Additionally, the mediation group's mean scores on the emotional well-being scales for flourishing and self-compassion as well as on the mediation skills measures of cognitive flexibility, perspective taking, and emotion regulation through cognitive reappraisal showed movement in the anticipated direction between pre-test and post-test, though not at a statistically significant level. The only unexpected result was that there was a statistically significant difference in the mean score between the pre-test and post-test for the mediation group's DASS-21 measures (.01 significance), with mediation students reporting greater feelings of depression, anxiety, and stress at the end of the semester. Our interpretation is that the DASS-21 scores reflected the end of semester pressures that the students in our sample were feeling.

For the control group, there was a statistically significant difference (at the .05 level) in the mean score between pre-test and post-test for emotion regulation by expressive suppression, showing an increase in the use of emotion suppression over the semester. As indicated in Table 1, expressive suppression has been found to disrupt communication and increase stress, lending some support to our prediction that students who do not take a mediation training course would have the same or decreased emotional well-being at the end of the semester. As with the mediation students, there was also a statistically significant difference in the control group's mean score for the DASS-21 from pre-test to post-test (.01 significance), with control group students showing increased levels of depression, anxiety, and stress at the semester's end. These levels were greater than those for the mediation students.

Finally, although the differences between the pre-test and post-test scores for the control group in the measures of positive relations with others, empathy, flourishing, self-compassion, cognitive flexibility, and emotion regulation by cognitive reappraisal were not statistically significant, we again found movement in the direction we would have predicted—the mean scores for each measure decreased between the pre-test and the post-test.

We conducted a second *t*-test analysis to determine whether the difference between the mediation group's mean score change over the semester and the control group's mean score change over the semester, for

each well-being and mediation skills measure, was statistically significant. Our analysis found that for the scale measuring positive relations with others, the control group’s mean score decreased over the semester, whereas the mediation group’s mean score increased over the semester, and this difference was significant at the .10 level. The mediation group’s mean score also increased on the flourishing measure between pre-test and post-test, again with the control group’s mean score decreasing, and this difference was significant at the .10 level. The same pattern occurred on the self-compassion scale—the mediation group’s mean score increased while the control group’s mean score decreased (significant at .05). Also, the mediation group performed better than the control group at the .10 level of statistical significance with respect to the cognitive flexibility measure—the control group’s mean score decreased over the semester and the mediation group’s mean score increased. Lastly, while not statistically significant, the increases in depression, anxiety, and stress scores were larger for the control group than for the mediation group.

**Quantitative Data Analysis and Results – Spring 2019 Semester**

The demographic characteristics of the Spring 2019 sample were similar to the Fall sample, although there were more 2L students and younger students in the Spring sample (See Table 3). The Spring sample generated different results from those of the Fall sample. Looking at the *t*-tests to compare pre-test and post-test survey scores with respect to each measurement scale for both the mediation group and the control group, we found only two statistically significant results versus four generated by the Fall sample. The mediation group showed a statistically significant increase in depression (at the .05 level) and a statistically significant decrease in cognitive flexibility (at the .05 level). Neither of these findings are in the direction we would have predicted. There were no statistically significant changes over the Spring semester for the control group on any of the scales. When looking at differences in mean scores between the pre- and post-tests across groups and with respect to each well-being and mediation skills measure, we did not find any pattern of change in the direction we had predicted (i.e., in many cases, the control group scores remained the same on the pre- and post-test and in some cases even improved somewhat, while in several cases the mediation group scores worsened).

**Table 3: Demographic breakdown of Spring 2019 sample by condition (group), year in law school, age, school, gender, and race/ethnicity**

Condition (Group)	Year in Law School	Age range	Law School	Gender	Race/Ethnicity
Mediation: 24	2L: 33	21-25: 28	*School 5: 9	M: 15	Caucasian/White: 25
Control: 21	3L: 12	26-30: 11	School 6: 3	F: 28	African American/Black: 8
		31-43: 6	School 7: 21	No answer: 2	Hispanic: 7
			School 8: 8		Asian: 2
			School 9: 4		No answer or other: 3

Note: (*n* = 45). Table reads top to bottom as independent columns (each column accounts for the 45 students in the sample); not across the rows

\*School 5 participated in both Fall 2018 and Spring 2019

As we did for the Fall sample, we ran a second *t*-test analysis to determine whether the differences described above between the mean scores for the pre- and post-tests of the two groups with respect to each well-being and mediation skills measure were statistically significant. Unlike the Fall sample, which generated four statistically significant differences in the direction we predicted, the Spring sample had only one statistically significant difference: the mediation group significantly decreased in cognitive flexibility as compared to the control group, which was not in the direction of change we would have predicted.

## Qualitative Survey Data Analysis and Results

We now turn to the qualitative data we collected from law students to help us interpret the foregoing quantitative results. Below is a discussion of the responses to the online prompt we sent mediation students once a week for nine consecutive weeks during the Fall semester, starting two weeks following completion of their pre-test survey. Table 4 illustrates the total number of responses to the online prompt we received per week. From this process, we learned that the weekly request was too onerous for the students. During the Spring data collection phase we reduced the online prompt to a one-time mid-semester assessment.

**Table 4: Fall 2018: Total number of online prompt responses per week.**

Week One	15
Week Two	11
Week Three	9
Week Four	7
Week Five	7
Week Six	5
Week Seven	6
Week Eight	4
Week Nine	1
TOTAL	65

Fall 2018 Weekly Online Prompts. The weekly prompt included two items to capture what students enrolled in mediation courses were learning and how they had applied what they learned in class to their daily lives:

“Describe something new that you learned in your mediation class this week. This could be a new concept, new skill or communication process, or even something you had heard of before but thought about in a new way.”

“Describe an event that occurred this week during which you were able to transfer or apply something you learned in your mediation class to a life experience. Such events might include relating something you learned in class to something you read, saw on television, or experienced during a conversation with a friend or family member. This might also include a time when you used one of the ideas or skills learned in class in an interpersonal interaction.”

Responses to the first prompt were examined to identify themes. The responses fell into three main categories of learned concepts/skills: (1) aspects of the mediation process; (2) mediation skills; and (3) emotional intelligence. Examples of mediation process aspects included making opening statements, caucusing, mediation setting considerations (e.g., room lighting, seating), and written mediation agreements. Examples of mediation skills included active listening, asking questions that elicit helpful information, reflecting, reframing perspectives, and identifying needs and interests. Examples of emotional intelligence included understanding one’s implicit biases, understanding and attuning to the emotions of disputants, maintaining a nonjudgmental posture, and working effectively with parties experiencing strong emotions. Approximately 45% of participant responses reported learning about mediation rules or processes, 43% described learning specific mediation skills, and 19% reflected understanding emotion (some respondents reported more than one learning outcome and therefore the

total is more than 100%). It is noteworthy that 3 of 5 respondents who reported that their mediation class was cancelled during a particular week still reported applying a mediation skill in their daily life that week.

With respect to the second prompt, some of the ways that students reported applying mediation skills in their daily lives included acting as a third party to help friends and family members resolve a conflict. Students often did this through asking questions, helping each side listen to the other in order to better understand the other's needs/interests, and allowing their friends/family members to express their emotions. Students also described imagining how they would apply mediation concepts to conflicts among characters in television programs they watched and actually applying skills such as listening, using more neutral language, and self-reflection in managing their own conflicts with friends, family members, and classmates.

Spring 2019 Mid-Semester Online Prompt. As indicated above, in the Spring we decided to send only one online prompt, at mid-semester, to law students enrolled in the mediation course. This was a single prompt that was revised to read:

“Please reflect on the skills you've learned and/or used in your mediation course up to this point in the semester. Describe two or three examples of situations in your daily life during the semester in which you were able to apply a skill you learned in your mediation class or used while conducting mediation. Such examples might include relating something you learned in class or used while conducting mediation to something you read, saw on television, or experienced during an interaction with someone in your daily life.”

We had a total of 13 students complete the Spring prompt, and their responses fell into the same three categories of learned concepts/skills as did the responses to the Fall prompts. Several students reported that they had learned aspects of the mediation process (5 of 13), including caucusing, writing mediation agreements, and encouraging parties to talk to each other. Specific mediation skills they described learning included identifying needs and interests (6 of 13), asking questions that elicit helpful information (4 of 13), and active listening (2 of 13). Four students reported that they had improved their understanding of emotions.

Almost all the Spring prompt responses included examples of how students had applied the mediation skills they learned in class to interactions with their family and friends. One student reported, “I have learned [from] the mediation class the skills and strategies that allow me to let my daughter express her opinions [in a] respectable manner.” Another student reported that they are much more in tune with their own and other people's emotions and have an easier time “sitting” with conflict. Only one of the 13 respondents indicated that they had not learned anything new. Another student started their response by saying they had not learned any new skills, but went on to write that they have exercised their ability to listen and determine what people “really mean” when they say something to figure out what is important to them. This response suggests that even when students cannot immediately identify a specific skill they have learned from mediation, exposure to mediation training may result in enhanced ability to communicate with and relate to others.

Fall 2018 Open-Ended Post-Test Question (Comparison of Mediation and Control Group Responses). A total of 46 survey participants completed the open-ended prompt at the end of the survey. Note that this number is higher than the 40 participants whose surveys were included in the foregoing quantitative analysis because not all of these post-tests could be matched to a pre-test. The open-ended question read:

“Many people who have attended law school perceive that the law school experience changes them in some way. As the final question of the survey, please describe any ways you perceive that your perspective or mindset has changed since you started law school.”

Of these responses, 32 were from students in a mediation course (see Table 2)<sup>1</sup>, 11 were from students in the control group, and three could not be identified (as there were no pre-tests whose UI matched with these three post-tests). Several common themes emerged from the analysis of these open-ended comments. When asked to consider how their perspective or mindset may have changed since they started law school, students’ responses tended to fall into the categories of communication skills, emotional well-being, or analytical skills. Examples of responses in the communication competencies category include “better listener”, “better social skills”, and “more open-minded”. Examples of responses in the emotional well-being category include positive examples such as “more self-confidence”, “more self-awareness”, and “greater ability to reframe stress”, as well as negative examples such as “more pessimistic”, “lost hope”, and “burnt out”. Examples of responses in the analytical skills category include “more analytical”, “more organized”, and “more strategic”.

Seven mediation students and one control group student reported improved analytical skills. Mediation students reported improved communication skills in 16 of the responses (50% of mediation students) as compared to four students (36%) in the control group. In addition, six mediation students reported improved emotional well-being, compared to two who reported decreased emotional well-being. In the control group, five of 11 respondents indicated decreased emotional well-being and two reported improved emotional well-being. Importantly, one student specifically attributed their improved communication competency and emotional well-being to mediation training. An example of a mediation student’s nuanced comment covering the communication skills and emotional well-being categories states:

Since I have started law school, I have looked at situations from different angles. I try to perceive why a person might be feeling a certain way or why they acted a certain way. I try to understand a person's feeling and try to find any solution to a crisis they might have. I also have noticed that I am more impatient since starting school. I have had to struggle with a lot of anxiety but having me-time helps.

In contrast, a control group student reported:

I think that my perspective has changed for the worst. Unfortunately, I am simply unable to see the light at the end of the road right now... I'm tired of feeling pressure, and of being stressed. I have no energy left to deal with this lifestyle anymore, and I certainly don't know how I will function as an attorney after the life has literally been sucked out of me for the last three years...

Spring 2019 Open-Ended Post-Test Question (Comparison of Mediation and Control Group Responses). We had 71 responses to the open-ended survey question in the Spring, which read:

“Please describe any ways, either large or small, that your perspective, mindset, or behavior has changed since the beginning of this semester. (For example, in the context of your self-awareness and/or your relationship with others.)”

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<sup>1</sup> While we only had 27 matching surveys from mediation students in the Fall, some students completed the post-test even though they had not taken the pre-test. In five of these cases it was clear from their response to the open-ended question that they were enrolled in a mediation course.

Of these responses, 34 were from students in a mediation course, 17 were from students in the control group, and 20 could not be identified (as there were no pre-tests whose UI matched with these 20 post-tests)<sup>2</sup>. The themes were somewhat different from those of the Fall in that participant comments only related to communication skills or emotional well-being and did not mention analytical skills. Examples of responses in the communication skills category include “better listener”, “better social skills”, and “more open-minded”. Sample responses in the emotional well-being category include “more self-confidence”, “more self-awareness”, and “better able to manage stress”.

More than 50% of the mediation students (19/34) and control group students (9/17) reported improved communication skills. A sample statement from a mediation student is:

I always think about needs and interests; instead of reacting, I acknowledge emotions first, which gives me time to reflect. I also take STOCK and stop to acknowledge and process my own feelings before I respond.

For the mediation group, six of the 34 students reported that their emotional well-being had improved, while 4 reported decreased emotional well-being. Six of the 17 control group students also reported increased emotional well-being compared to three who reported decreased emotional well-being. An example of a mediation student who reported improved emotional well-being follows:

I have become more confident in myself and my abilities, especially after doing the mediation clinic. I still feel unsure of myself at times, but I feel that this is normal, and that being unsure of oneself is a part of human life. It's okay to feel anxious and nervous sometimes.

Overall, we found fewer differences between the mediation and control groups in the Spring sample than in the Fall sample, to be discussed in more detail below.

### **Key Findings & Limitations of Survey Results**

In this summary section we discuss the survey and online prompt responses in light of our Research Questions and identify limitations of the survey.

Key Findings. Research Question One asked: *Do law students enrolled in a one-semester course in mediation skills training report enhanced emotional well-being and/or changes in their perspective or behavior at the end of the semester?*

Law students enrolled in a one-semester mediation skills training course in Fall showed increases over the semester in emotional well-being, as measured by the scales of positive relations with others, flourishing, and self-compassion, in contrast to decreases in those same measures for control group students from pre- to post-test. Further, when Fall responses to the open-ended question and prompts are considered, we see that mediation students' reflections report changes in their behavior and perspective indicating that their emotional well-being has improved. On the other hand, Fall mediation students showed increases in their levels of depression, anxiety, and stress as measured by the DASS-21 scale, although not as large as the increases in those same measures for control group students. Taken as a whole, these Fall findings

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<sup>2</sup> While we only had 24 matching surveys from mediation students in the Spring, a substantial number of students completed the post-test even though they had not taken the pre-test. In 10 of these cases it was clear from their response to the open-ended question that they were enrolled in a mediation course.

corroborate existing evidence of the negative impact that law school seems to exert on all law students, while also suggesting that mediation skills training can provide an effective approach to helping mitigate that negative impact.

The quantitative survey results from the Spring semester do not offer much insight into this question, as there was only one statistically significant finding regarding emotional well-being measures versus six in the Fall. Despite the foregoing results, the responses to the Spring prompt and open-ended survey question provide evidence that some mediation students felt their emotional intelligence had improved and experienced increased emotional well-being. However, the differences between mediation students and those who had not taken a mediation course were not as clear and consistent as the differences we saw in the Fall sample. Also, it is interesting to note that many more students in the Spring semester did not follow the simple steps to re-enter their UI on the post-test and thus reduced the potential number of matching surveys for tracking change. Our speculation is that law students simply feel more pressured and stressed one semester further into their law school education.

Research Question Two asked: *Do law students enrolled in a one-semester course in mediation skills training report increased knowledge of mediation skills [particularly, those of Cognitive Flexibility, Empathy, Emotion Regulation, and Perspective-Taking] at the end of the semester?*

Law students enrolled in a one-semester mediation skills training course in Fall showed increases in the skills of cognitive flexibility, perspective-taking, and emotion regulation through cognitive reappraisal over the semester, as compared to decreases in cognitive flexibility and emotion regulation through cognitive reappraisal among students in the control group. Mediation student responses to the online prompt and open-ended survey question in the Fall provide additional evidence of increased knowledge and application of mediation skills. Many mediation students reported that they use their mediation skills with friends and family and they perceive that they are better listeners, more open-minded, less judgmental, and better able to understand emotions and analyze the situations of others. These open-ended comments show that many mediation students do report improved knowledge and use of core mediation skills.

Again, the results from the Spring semester offer little insight into this question as the statistically significant change for mediation students (decrease in cognitive flexibility) was in the opposite direction from that which we would have predicted. Nevertheless, in their open-ended prompts and survey responses, it is clear that students who enrolled in a mediation course in the Spring learned important communication skills, including active listening and how to ask questions that help discover underlying interests. Mediation students also consistently reported that they had applied the mediation skills they learned in class to interactions with their family and friends.

Research Question Three asked: *Do law students enrolled in a one-semester course in mediation skills training report the application of mediation skills they learned during the course to daily life interactions?*

The answer to this question is a resounding yes. The majority of students who responded to the online prompts in Fall and Spring reported that they recognize their awareness and use of mediation skills in their everyday interactions. In some cases, they applied the skills while watching television and analyzing a conflict situation, and in many cases they found themselves using skills such as active listening, empathy, and nonjudgement when talking to friends or family members about conflicts those people were having and even applying the skills in their own conflicts. Many mediation students reported that they looked for underlying interests, improved their ability to consider another party's needs, and helped others engage in creative problem solving rather than simply telling the other what they thought they should do.

## Survey Limitations

Our survey sample was limited in several ways. For one, it was a small sample because we experienced great difficulty in recruiting law students to complete both the initial survey and the final survey at the end of the semester. The number of matching surveys required for tracking change was further reduced by students who did not follow the simple instructions provided on both the initial and final survey for entering the same UI. This likely speaks to the pressure and stress law students feel, particularly at the end of the semester. A second limitation is that the time period of one semester may not be long enough to achieve a large number of statistically significant results. In conversations with attorneys and others who have participated in mediation training (to be presented below), many participants commented that they often did not experience the benefits of mediation training until several years later in their career.

The difference between the Fall and Spring samples is also a concern in our data. There was one important difference in the recruitment process of Fall and Spring students. In the Spring, we were able to offer a \$20 Amazon gift card to each student who completed both the pre-test and a matching post-test at the end of the semester. It is possible that offering this incentive encouraged some students to complete the survey without careful consideration of each question, as they may have been more interested in the reward than the task itself. This may have impacted the reliability of survey responses.

Further, we posit that there may be differences in law student frame of mind in the Fall versus Spring semesters. For example, at the end of the Fall semester students head into a holiday break, while students at the end of the Spring semester face strong pressures to find a summer clerkship if they are in their second year or permanent employment if they are in their final year of law school. Another possibility, which is consistent with the literature on the negative impact of the law school curriculum on students, is that students in the Spring semester are one more semester into law school, and it may be that depression, anxiety, and stress worsen over time. Finally, the recruitment of students from nine different law schools may have introduced other variables that we could not control for, such as the overall climate of each institution (e.g., do they have programs to support mental health) as well as how mediation courses are taught. In order to control for these extraneous variables, we would have had to follow more students in one cohort from fewer schools over a longer period of time. This is an important implication for future research. We also recognized from the beginning of our study that we would likely get a different perspective on the relationship between emotional well-being and mediation training and practice from practicing attorneys and other professionals who have participated in such training. We therefore conducted a series of interviews of these professionals in the Spring of 2019, and we now move to a discussion of the interview sample, the interview procedures, and results.

## **Research Method 2: Interview Description and Results**

### Interview Sample and Protocol

We interviewed a total of 14 participants, nine men and five women, all of whom had taken mediation training at some point in school or during their career. We used a purposive sample, which is defined by researchers as people or informants who are most likely to have the expertise and knowledge relevant to the topic of interest. This was also a convenience sample in that we interviewed people we knew personally or professionally from either legal, academic, or mediation networks. Of our 14 interviewees, eleven were law school graduates. Of these eleven, two practice law exclusively, one practices law and conducts mediation, one conducts mediation exclusively, one combines law practice, mediation practice, and teaching mediation, while the other six are full-time or part-time law school faculty who teach mediation and also conduct mediation and/or direct dispute resolution or mediation programs. Of the remaining three participants, two are graduate school faculty who teach mediation and the other is a business professional who was trained and served as a peer mediator in high school.

The interview protocol included a series of questions concerning: what motivated the participant to obtain mediation training; the impact of mediation training/practice on their educational experience, professional work, personal and professional relationships, perspective and mindset, and emotional well-being; which mediation skills they have found to be most useful; and their perceptions regarding how mediation training/practice impacts legal practice, the benefits for law students of taking mediation training, and the main obstacles hindering more widespread integration of mediation training in law school curriculum.

Interviews were conducted in a face-to-face setting or by telephone. Most interviews were audio-recorded and transcribed, with transcriptions supplemented by the interviewer's notes. The first author conducted all fourteen interviews. The interviews ranged in length from 73 minutes to 160 minutes, with an average of 95 minutes per interview. In four cases, no audio recording exists and we relied on the interviewer's notes. We analyzed 218 pages of transcripts, supplemented by 55 pages of notes.

### Interview Analysis & Results

Interview data were analyzed by the first and second author independently. The first author read through her interview notes looking for themes of responses that answered each of the overarching research questions four through eight on pages four to five of this report. The second author read each transcript (where available) as well as the interviewer's notes, also looking for thematic responses to the research questions. Once each of us completed our analysis of the responses to the research questions, we compared our findings and discussed any differences in interpretations until we reached agreement. Each of us also selected key quotes we believed illustrated the response themes, and some of these are shared in the discussion of each research question below.

Research Question Four: *Do attorneys or other professionals who have taken mediation training, including instructors who teach mediation skills training in law, undergraduate, or graduate school (hereafter, mediation-trained professionals) report that mediation skills training/practice/teaching has had an impact on (a) their professional work, (b) their professional and/or personal relationships, and/or (c) their emotional well-being and, if so, in what ways?*

Impact on professional work. Several themes emerged in participant responses regarding how mediation training has impacted their professional work. The most common theme, shared by all 14 interviewees, was that mediation training had either shaped or changed their work path or approach to work in positive ways. Two of the four participants who took mediation training in law school found their calling as a result of the training and began working in the field from the start of their career; the other two reported that mediation training enhanced their employment prospects from the outset and increased the effectiveness of their client representation throughout their careers. Those two interviewees also commented explicitly and emphatically that they had not taken mediation training in order to conduct mediation but rather because they thought it would generate benefits for them in practicing law. An additional and striking point noted by one of those two participants was that they would have dropped out of law school during their first year but for taking a required course in contract negotiation during the spring semester (a course that aligns closely with mediation training). They reported that the negotiation training totally engaged them, in stark contrast to the lack of engagement they experienced in all other courses they took in their first year of law school.

Of the seven participants who took mediation training following law school, six redirected their primary professional focus to mediation-based work after taking the training (including one who commented that 'it fed his soul more than law practice' and another who remarked that it 'fired her up and caused her to turn her career towards it'). The seventh expanded their law practice to include mediation services and reported that mediation training caused them to change their approach to client representation and case

evaluation away from the adversarial/litigation mode to an approach focused on early resolution of cases which saves clients time, expense, and worry.

Each of the two participants who took mediation training after graduate school expanded their professional focus to include mediation-based work. The participant who took mediation training as a high school student reported that the training has strongly influenced his approach to work throughout his business career.

A second theme shared by nine interviewees was that mediation training increased their job effectiveness by enabling them to better understand and navigate the strong human relations aspects of professional jobs. For those in law practice, this translated into increased client satisfaction by helping them resolve cases earlier and at lower cost and risk, as expressed in the following example:

...thinking in terms of the early resolution of cases in ways that can save clients time, cost, and worry, and perhaps you'll yield them as good or better an outcome as they might get through litigation and trial at lower risk, which generates a more satisfied client. So, I think that it's had a big impact in how I evaluate cases and how I approach cases.

Expressing a similar sentiment, a participant explained that he took mediation training during law school not in order to become a mediator but rather 'to know his audience'— to understand the feelings and desires of all the players involved in a case so he could be in the best position to move things in a favorable direction for his client. He also commented that 'every interaction is a mediation, so knowing and applying mediation skills helps constantly in life.' Echoing this same theme, a mediation instructor explained that he not only used mediation skills in conducting mediation, but 'he also consciously applied them 'invisibly' to non-mediation work'.

A third theme among lawyer participants regarding how mediation training and practice impacted their professional work was that their mediation-informed approach to client representation increased their work satisfaction because they felt they had made a positive contribution to someone else's life, and they felt good about that. For example,

...if I'm able to facilitate discussions that lead to a better understanding on the part of the parties and their counsel of their claims and defenses and that leads to a resolution of the dispute, then that's a very good and satisfying feeling to have helped parties resolve their dispute that otherwise might be very heated and ugly.

[When] you come home from mediation, even if it's not a completely resolved case, you at least moved the ball forward. For me personally, that's an accomplishment. When I can see I've accomplished something for other people, I think it trickles down into the rest of what we do.

Impact on professional and personal relationships. All but one participant stated explicitly that the skills they learned and began developing during mediation training and practice improved their professional relationships. It is noteworthy that both participants who intentionally took mediation training in law school to enhance their professional skills rather than to become a mediator, emphatically affirmed that the training has had a positive impact on their professional and personal relationships throughout their career and lives. One participant elaborated on this by indicating that mediation training improved their relations with opposing counsel while many others commented that it improved their relationships with clients. Several interviewees mentioned that mediation training and practice improved their ability to negotiate as well as to facilitate meetings. An attorney/mediator who also teaches

mediation to practicing attorneys commented that when his students explain why they want to take the training, they often say:

I want to do this because I'm not happy going to court all the time, and I'm not happy having negative conversations with the opposing counsel, who sometimes are my friends and sometimes not, and I want to really change the things I do to incorporate more things that are positive and not negative.

And, according to a participant who teaches mediation training in graduate school, the only way to obtain these types of skills is to take mediation training because "These skills don't come naturally to us – they have to be taught and practiced".

Interviewees also believe that mediation training and practice has had a positive effect on their personal relationships with family and friends. The major themes in this category include increased ability to engage in active listening (10 interviewees said this), feel empathy (10), take an open-minded and nonjudgmental approach in conversation or conflict with others (9), see different perspectives (8), and help others engage in brainstorming and problem-solving (7). Several interviewees elaborated on these ideas by talking about how mediation increased their emotional intelligence in terms of recognizing, labeling, and understanding emotions, which helped them understand others and promote dialogue. A quote that reflects many of these themes is provided by a law school graduate who has been a full-time mediator for most of his career:

I have developed the skill of listening more intently and not being judgmental. I take the time to reflect. Also, I think that I have developed the skill of being more careful and being more precise.

A business professional who trained and served as a peer mediator in high school described how that experience transformed him and impacted his personal relationships:

I think that mediation and learning how empathy works and how to project it onto the world around you has influenced every personal relationship that I've had since that moment. Whether it be romantic relationships, friendship relationships, colleagues, all of that kind of stuff, the ability to quickly and effectively put yourself in the shoes of the person standing across from you is one that I think is lost in a lot of people because it requires intense focus, time, and listening, which is something that we're not trained very well to do.

He went on to add that the benefits he has gained from mediation training—developing emotional intelligence and communication skills—have continued to grow throughout his career. This sentiment was echoed by another interviewee who commented that he hadn't understood everything about mediation when he completed the basic training course, but because "the seeds were planted" he has grown his skill set and understanding over time.

Impact on emotional well-being. The third part of Research Question Four asked interviewees whether they believed that mediation training had impacted their emotional well-being. All 14 interviewees perceived that it had, and they explained that the positive changes the training generated in their personal and professional lives resulted in their improved emotional well-being. Key themes in this category of responses included that they: applied mediator skills to their own lives, which increased personal growth and well-being (11); experienced increased self-awareness (8); and developed a more positive mindset that included looking for more collaborative solutions to conflict (6). This perception is

summed up in the words of one mediator instructor who was quoting the program director of a large mediation center, “Mediation is going to make your life better!”

One full-time mediator responded that in addition to generating good feelings from helping others resolve conflict at less emotional and financial cost than going to court, mediation practice has ‘translated into my being less prone to getting into conflicts in my own life because I can diagnose the problem and figure out a way to deal with it using my pre-frontal cortex instead of reacting emotionally’ and this, he explained, has increased his emotional well-being. The business professional mentioned earlier also agreed that mediation has impacted his overall emotional well-being, saying:

Mediation has taught me to employ empathy inward, as well. It’s taught me how to identify my shortcomings—the things that I don’t like about myself or want to change about myself—and have the empathy to forgive myself for those things. To be understanding, while encouraging growth. I think that something that we all struggle with is being able to identify our flaws, not shy away from them, but instead understand and forgive ourselves for them.

***Research Question Five:** What, if any, are (a) the potential benefits that mediation-trained professionals believe law students stand to gain from taking mediation skills training and (b) the actual benefits that instructors who teach mediation skills training in law, undergraduate, or graduate school have observed their students gain as a result of the training?*

Part (a): Similar to the responses to Research Question Four, interviewees’ responses to the question of potential benefits of mediation skills training for law students fell into two major categories: professional benefits, including improved communication skills and emotional intelligence competencies; and personal growth and increased emotional well-being.

Professional benefits. All eleven of the law school graduate interviewees indicated that having an understanding of the mediation process is not merely a benefit but actually an essential lawyering skill because mediation is now an integral part of civil procedure in most courts in the United States and the majority of cases settle outside of court. In the words of one attorney mediator, mediation is a key part of “civil procedure for the modern practice of law”, and according to another, “it should be seen as a core course now that it is becoming required in so many court jurisdictions”.

All 14 of the interviewees said that emotional intelligence and communication skills are important competencies for attorneys and that mediation training is one of the most effective ways, if not the most effective way, for students to actually learn and practice those skills. Specifically, regarding emotional intelligence, one attorney mediator explained that mediation skills ‘build bridges between the limbic system and the cortex so mediators can understand emotions and apply emotional content to the analytical thought process.’ Another attorney mediator commented on the importance of self-awareness and openness to really listening:

When you have an agenda you can’t hear everything that’s being said...The foundation of mediation is self-awareness. The reality is that we can get all the training in the world, but if we can’t be self-aware then we can’t get past our biases.

A third attorney mediator, remarking on the lack of emotional intelligence of many lawyers and thus on the need for training in this area, commented:

Lawyers don’t want to hear about people’s feelings and emotions, but the feelings and emotions are what drive people to make the decisions that they do. I oppose this view that

people should handle their matters like a business dispute. Lawyers don't know how to deal with people's feelings because they're not trained in it and it makes them uncomfortable.

A similar feeling was expressed by a non-mediator attorney:

The reality of being a lawyer is that the practice of law is a very emotional practice, so dealing with emotions is an essential part of being a lawyer, and mediation training teaches students skills that are key to understanding and navigating these emotions.

With respect to communication skills, all interviewees commented on some dimension of improved interpersonal communication as a key benefit for law students from taking mediation training. Specific examples of skills they cited that improve with mediation training include creative problem-solving and brainstorming, ability to promote dialogue, openness to different perspectives, asking open-ended questions, empathy, nonjudgmental attitude, self-monitoring, ability to tailor communication to different audiences, active listening, and negotiating abilities. Importantly, several interviewees specifically noted that improved communication skills lead to better relationships with both clients and opposing counsel.

As indicated earlier, many interviewees also commented on how mediation training can improve attorney performance and client satisfaction by helping attorneys resolve cases earlier and at lower cost, risk, and worry for clients. In fact, one attorney mediator suggested that mediation instructors describe the benefits to students in this way: "Let me show you how learning this will help you make more money". He went on to explain that by increasing one's emotional well-being and outside-the-box thinking, mediation training improves lawyer effectiveness, resulting in higher earnings over fewer hours. A different slant on this point by another interviewee suggested that "mediators are more flexible thinkers than the average lawyer...they can see multiple perspectives/they have a holistic perspective." In addition, several law school graduates specifically mentioned that mediation training increases students' marketability.

Lastly, most of the interviewees spoke pointedly about the value of emotional intelligence and communication skills to law students as a key competency that will distinguish their expertise from that of artificial intelligence throughout their career. In thinking about the effect of AI on the legal profession, one participant put it this way, the "ability to deal in emotional currency ...will become even more valuable in the future, transforming these skills from ancillary to 'must-haves'". Another commented that "you can't computerize being a mediator". Yet another put it this way: "Lawyers with these skills (emotional intelligence and communication skills) have better employment prospects since AI can't replace them".

Benefits of personal growth and emotional well-being. Many interviewees, including the two law school graduates who took mediation training in law school to enhance their lawyering skills rather than to become a mediator, indicated that mediation training could help young lawyers improve their emotional well-being by: enabling them to increase job satisfaction and decrease job pressure as a result of resolving cases more efficiently and effectively and thereby saving time and increasing client satisfaction; increasing their self-awareness and ability to handle job pressures; improving their relationship building skills; and developing a more positive outlook overall. In sum, one attorney mediator noted that the overall effect of all the professional benefits that law students gain from mediation training is to increase their emotional well-being. Another expressed it this way: "They all learn the basic human/interpersonal skills that help them navigate the world." More direct evidence for this perception was revealed in response to Research Question Seven, discussed below.

Part (b): Interviewees' responses to part (b) of Research Question Five, which asked mediation instructors to describe the actual benefits they have observed that their students gained from mediation skills training, provide more direct evidence for the potential benefits described above.

Nine of our interviewees had direct experience with teaching mediation skills training to students and could provide evidence of changes they have observed in their students as a result of the training. One interviewee made the global statement that the majority of every group of mediation students she has taught experienced a "total shift in mindset". This resembles the comments of two other instructors who indicated that part of the change they have seen in their students relates to developing an understanding that conflict resolution can generate an outcome beneficial to both sides and does not have to be a win-lose/zero-sum game. Instructors also commented that in informal conversations initiated by students, the students often described improvements in their personal and professional relationships, increased ability to reframe conflict, and self-awareness regarding their typical responses to conflict, including recognizing that they could make changes and better manage conflict. In summary, those interviewees who have had direct experience teaching mediation skills training to students were able to confirm the types of outcomes that all interviewees speculated would result from mediation skills training.

*Research Question Six: What differences, if any, do mediation-trained professionals perceive between attorneys who exclusively practice law and those who also conduct mediation?*

All eleven law school graduate interviewees reported perceptions of significant differences between attorneys with mediation training and those without. Many talked about the stress and health challenges of full-time litigators. One interviewee commented that in large firms, a number of attorneys have had a heart attack by age 50. Another interviewee told the story of a very successful attorney who never asked anyone for help and ultimately committed suicide when the burden of practice became too great. While these may be extreme anecdotes, another interviewee explained his perception of attorneys:

They're obsessed with perfection, and therefore since nobody's perfect, they're obsessed with their inability to be perfect and, you know, eat themselves alive" ... I think that being a mediator has helped me avoid that.

Other comments comparing attorneys who are also mediators to attorneys who do not mediate reflected differences in overall disposition. Examples included the statements that mediators are generally "nicer people," less adversarial, and more flexible and willing to look for creative solutions. One interviewee distinguished attorneys who practice law exclusively from those who also mediate by remarking that she knows many attorneys in the former category who are unhappy because they don't like what they do but she "never met a mediator who doesn't love what they do!" Interviewees also mentioned that attorneys with mediation training tend to rise more quickly in their organizations, and they often have skills that other attorneys do not have, such as understanding people's underlying needs and interests and employing emotional intelligence in general. Along these lines, one attorney/mediator suggested that attorneys have lower than average emotional intelligence:

I do believe that there's a very strong correlation between the very low emotional intelligence of lawyers and the fact that they have these mental health issues and substance abuse issues...I would have a hard time believing that mediators would have that level of substance abuse and mental health disorders.

Another attorney mediator remarked upon the difference in his own experience between the days he spends in litigation versus in mediation:

[My wife] can also tell when I'm about to litigate. Because she's like "you're stressed out, you gotta work over the weekend to prepare, you're semi-distracted about whatever's going to be happening". So (that's) the before, and after litigation is, well, after litigation you're waiting for a result—so you can tell, coming home, it's like "alright, give me 30 minutes to go decompress by myself."

He also mentioned that earlier in his career, when he practiced law exclusively, he'd often wake up and feel immediately anxious about the day, yet now that he conducts mediation most of his days, he wakes up and is excited and hopeful about the day.

Importantly, a few of our interviewees also commented that some attorneys really enjoy the adversarial part of their work. While all interviewees perceived that mediation training would benefit all lawyers, they did not feel that all attorneys should be mediators.

Research Question Seven: *Do mediation-trained professionals believe that mediation skills training should be more widely integrated into the law school curriculum and, if so, how?*

Thirteen out of 14 interviewees believed that some type of course that helps law students obtain mediation skills should be required during law school. A few interviewees thought another or possibly better approach would be to integrate alternative dispute resolution or mediation concepts into some or all doctrinal courses on substantive law. This way all law students would be exposed to thinking about more open and creative approaches to legal cases rather than focusing solely on the adversarial process. Elaborating on this concept, one interviewee suggested a new type of course which would, first, use the traditional approach of case analysis to understand how the court ruled and why it ruled in that way and, second, employ an alternative approach to consider how the case could have been resolved differently using mediation or other alternative dispute resolution approaches.

Other responses to this question included specific ideas about what a required mediation or other alternative dispute resolution course might look like. These ideas included: teaching law students some basic neuroscience about how the part of the brain that plays a key role in processing emotions—the amygdala—gets triggered during conflict and about the consequential importance of understanding emotions in dealing effectively with conflict; starting the course by teaching negotiation skills and then progressing to mediation skills so that the student first develops an understanding of what it feels like to be one party to a conflict before learning how to understand the perspective of each party to the conflict, i.e., the mediator perspective; incorporating mindfulness into the course with its emphasis on being present in the moment and fully attentive; focusing 50% of the course on skills and practice; and teaching community building.

Several interviewees suggested having law students take the course during the second semester of their first year. This would enable students to understand early on that there are different ways to resolve conflict and that a lawyer's role is much broader than fighting in court. It would also begin activating the positive impact of mediation training on students earlier in their legal education. One interviewee commented that allowing law students to take a standard mediation course at any area law school or mediation center, a model that several law schools in a large metro area follow, could make it easier for law students to take mediation training and thus increase the number of students who take it. Another commented on the importance of having a skilled practitioner teaching the mediation course.

One interviewee questioned the value of a required course in mediation training during law school, commenting that law students don't have the legal experience or context to fully appreciate what mediation can do, but suggested that all lawyers should get mediation training once they begin to practice.

As mentioned above, there was also an argument for integrating aspects of mediation training into each course, such as “how mediation can help” in torts, contracts, family law, and other substantive courses. An attorney/mediator supported this idea, saying:

I don't think the answer is a required mediation class. I think that the answer is to incorporate mediation as a process and an approach along with the adversarial process and approach. I think that the answer is when they're teaching people in law school and in continuing education, that they stop connecting an adversarial process and approach with substantive issues and start to have more diverse teaching that focuses on the different processes and approaches to dealing with substantive legal issues...Otherwise, it's [the curriculum] going to undo everything that people are taught in this mediation class.

Research Question Eight: *What do mediation-trained professionals perceive as the greatest obstacles to widespread integration of mediation skills training into the law school curriculum?*

In response to this question, most of our interviewees pointed to the fact that law schools are very resistant to change and have been wedded to the case law method of instruction that emphasizes rational, logical, analytical, and critical thinking abilities. In fact, one interviewee underscored this point by paraphrasing a Marshall McLuhan quote as follows: “Legal educators are looking in their rearview mirror”. Other obstacles cited included a curriculum that is already full of requirements, the ABA's valuing of analytical skills over interpersonal skills, and a focus of doctrinal professors on teaching to the bar exam and its analytical demands. Moreover, many interviewees commented that doctrinal faculty do not generally recognize the value of mediation skills because they never took mediation training and have little respect for it.

Several interviewees mentioned law students' negative perception of mediation training as an obstacle to higher enrollment in mediation courses. They commented that most law students sense the general lack of respect among legal educators for mediation training and they are thereby disinclined to take a mediation course. Some interviewees also remarked that law students are unaware that an increasing number of law firms and other legal employers want to hire law school graduates with the kinds of skills that students learn in mediation training -- emotional intelligence and communication skills. At least one interviewee pointed out that students themselves might be resistant to a mediation requirement because their focus is on how to make more money by litigating cases as opposed to how to make clients happy by resolving cases earlier, and they don't realize that making clients happy is the avenue to increasing their law practice and earnings. Interviewees also noted that law students do not understand how nearly universal mediation has become in the US legal system.

All interviewees suggested that if we want to promote more widespread mediation training in law school, we would really need to educate law school administrators, doctrinal faculty, and students about the many ways that mediation skills can help law students increase their likelihood of success in the legal profession, such as described in response to Research Question Five above. Along these lines, one interviewee recommended rebranding the course more broadly as a training program that emphasizes the learning and application of interpersonal effectiveness skills (what we have earlier identified as emotional intelligence and communication skills).

### **Study Limitations and Implications for Research and Practice**

Earlier in this report, we described limitations of our study design, including the difficulty of obtaining law student commitment to complete both required surveys (an initial survey at the beginning of the

semester and a final survey at the end of the semester) and to use the same Unique Identifier for each survey. This difficulty led to the limitation posed by having a relatively small number of matching surveys. Additionally, our data were limited by the short period of time in which we tracked change, as we only had access to most participating law students for one semester<sup>3</sup>. With respect to both our surveys and our interview sample, our work was also limited in that the majority of data we collected was self-report data rather than objective or external evidence of change in behaviors or emotional well-being over time. While self-report data are commonly used in psychological research and were used in the 2016 ABA/Hazelden study on attorney mental health, we believe that the findings from this study warrant additional research, including other sources of data. We specifically recommend a longitudinal study that follows law student cohorts over time and collects multiple sources of qualitative and quantitative data both during and following law school. Such a study would require significant resources and law school partnership and commitment, but we believe it would be invaluable given the significant and continuing mental health challenges confronting law students and practicing attorneys and the resistance to change within the legal education field.

In conclusion, both the literature review that preceded this study and the promising findings from the Fall survey of law students as well as from the interviews we conducted of mediation-trained professionals support our contention that mediation training and practice generate a large number of benefits for participants. While clearly the full impact of the training takes time to be realized, the similarity between the skills and insights that mediation students reported learning from mediation training and applying in their daily lives and those that mediation-trained interviewees developed as a result of mediation training and practice provides strong evidence that students begin reaping benefits from mediation training even before their training course has finished.

With respect to law students, the argument that mediation skills training produces important benefits is especially strong because of the large role mediation now plays in our legal system. The primary implication of our research is that mediation skills training should be more widely integrated into the law school curriculum. At a minimum, such a move will help prepare law students for representing clients in mediation. It will also introduce them to a collaborative, interests-based alternative to the standard adversarial legal process which may generate value for many clients and provide a more optimistic and healthy view of conflict. Our study also suggests, however, that mediation training offers important additional benefits, including increased communication and emotional intelligence competencies that can enhance professional as well as personal relationships and help mitigate the toxic levels of depression, stress, and anxiety that plague law students and the legal profession.

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<sup>3</sup> Two of our partner law schools had students who were enrolled in a second semester of mediation skills training through a practicum course. Only a small number of those students ( $n = 11$ ) participated, and no statistically significant differences were found.

## References

- Dennis, J. P., & Vander Wal, J. S. (2010). The Cognitive Flexibility Inventory: Instrument Development and Estimates of Reliability and Validity. *Cognitive Therapy and Research* 34: 241. <https://doi.org/10.1007/s10608-009-9276-4>
- Diener, E., Wirtz, D., Tov, W., Kim-Prieto, C., Choi, D., Oishi, S., & Biswas-Diener, R. (2009). New measures of well-being: Flourishing and positive and negative feelings. *Social Indicators Research*, 39: 247-266.
- Gross, J.J., & John, O.P. (2003). Individual differences in two emotion regulation processes: Implications for affect, relationships, and well-being. *Journal of Personality and Social Psychology*, 85: 348-362.
- Lovibond, S.H. & Lovibond, P.F. (1995). Manual for the Depression Anxiety & Stress Scales. (2nd Ed.) Sydney: Psychology Foundation.
- Lyubomirsky, S., & Lepper, H. (1999). A measure of subjective happiness: Preliminary reliability and construct validation. *Social Indicators Research*, 46: 137-155. The original publication is available at [www.springerlink.com](http://www.springerlink.com).
- Malizia, D. A., & Jameson, J. K. (2018). Hidden in plain view: The overlooked impact of mediation on the mediator and implications for conflict resolution education. *Conflict Resolution Quarterly*, 35(3): 1- 18. doi: 10.1002/crq.21212
- Neff, K. D. (2003). Development and validation of a scale to measure self-compassion. *Self and Identity*, 2: 223-250. doi: 10.1080/15298860390209035
- Ryff, C. D. (2007). <http://sparqtools.org/mobility-measure/psychological-wellbeing-scale/>
- Ryff, C. D. (1989). Happiness is everything, or is it? Explorations on the meaning of psychological well-being. *Journal of Personality and Social Psychology*, 57: 1069–1081. doi: [10.1037/0022-3514.57.6.1069](https://doi.org/10.1037/0022-3514.57.6.1069).
- Spreng, R. N., McKinnon, M. C., Mar, R. A., & Levine, B. (2009). The Toronto Empathy Questionnaire: scale development and initial validation of a factor-analytic solution to multiple empathy measures. *Journal of personality assessment*, 91(1): 62–71. doi:10.1080/00223890802484381
- Williams, M. (2012). Perspective taking building positive interpersonal connections and trustworthiness one interaction at a time [Electronic version]. Retrieved May 1, 2018, from Cornell University, ILR School site: <http://digitalcommons.ilr.cornell.edu/articles/1006>