

CONCRETIZING THE MEDIATOR'S *JE NE SAIS QUOI*: EMOTIONAL INTELLIGENCE AND THE EFFECTIVE MEDIATOR

Courtney Chicvak

"All learning has an emotional base." – Plato

I. Introduction

The job market for mediators is unique: there are few formal limitations imposed upon individuals who seek to become mediators, yet the number of positions available for mediators is limited. Therefore, an imbalance arises between supply and demand in the job market.¹ Thus, the laissez-faire market regulates who may act as a full-time mediator on the basis of that mediator's reputation, which is generally developed by word-of-mouth client and attorney experiences during mediations. Consequently, an individual may receive more or fewer cases based upon parties' desire for a particular individual to mediate a dispute.²

In the legal profession, attorneys who seek to become mediators generally pursue some level of coursework in the area of Alternative Dispute Resolution prior to entering into this unique field, and they possess an overall understanding of the techniques and tools a mediator may use to effectively and efficiently assist parties in resolving a dispute.³ Particularly in the case of attorney-mediators, they have natural strengths and inclinations towards reasoning and logic and are well equipped to assist parties in

¹ See generally Marty Nemko, *Mediator: Executive Summary*, US NEWS AND WORLD REPORT,

<http://money.usnews.com/money/careers/articles/2007/12/19/mediator-executive-summary> (last visited Apr. 21, 2013) (estimating that there are only 10,000 mediators in the United States earning approximately \$50,000 a year from mediations, and a large number earning less.)

² Urska Velikonja, *Making Peace and Making Money: Economic Analysis of the Market for Mediators*, 72 ALB. L. REV. 257 (2009) (discussing the economics of pursuing a career as a full-time mediator).

³ BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION (Daniel Bowling & David Hoffman eds., 2003).

designing workable solutions to resolve the issues at hand.⁴ Yet, despite the level of academic achievement or knowledge of mediation techniques and tools, some attorney-mediators are more successful in settling cases, thereby building a reputation and continuing to operate as full-time mediators.⁵ I propose the missing link, or *je ne sais quoi*, that allows mediators to develop such admirable reputations, and, subsequently, viable careers in the area of mediation, is a mediator's awareness of and possession of emotional intelligence during the course of the mediation process. A subset of the theory of multiple intelligences, emotional intelligence is defined as "the ability to perceive accurately, appraise, and express emotion; the ability to access and/or generate feelings when they facilitate thought; the ability to understand emotion and emotional knowledge; and the ability to regulate emotions to promote emotional and intellectual growth."⁶

In this paper, I will define emotional intelligence and establish the value of this type of intelligence by providing examples that demonstrate the added value it provides to the mediation process. I will also show how emotional intelligence is a critical component of the role of a mediator. I will explain the acquisition of emotional intelligence and how, although emotional intelligence cannot be learned per se, it can be improved upon as any other type of intelligence.

⁴ *Id.*

⁵ Velikonja, *supra* note 2, at 257.

⁶ PETER SALOVEY & JOHN D. MAYER, EMOTIONAL INTELLIGENCE: KEY READINGS ON THE MAYER AND SALOVEY MODEL 35 (Peter Salovey et al. eds., 2004).

II. Theory of Multiple Intelligences

Philosophers such as Darwin and Plato have noted the important role emotions play in disputes.⁷ However, the theory of multiple intelligences, including emotional intelligence, was not proposed as a formal area of scientific study until the 1980's.⁸ Since the initial studies of the theory of multiple intelligences spearheaded by Howard Gardner, it has been further developed by a wide array of academics.⁹ To understand the theory of emotional intelligence, one must first depart from the traditional definition of intelligence. The traditional model is based on two fundamental assumptions: first, that human cognition is unitary, and second, that each individual possesses an intelligence that is single and quantifiable.¹⁰ Contrarily, the theory of multiple intelligences suggests that each person has several different potential competencies and that these competencies may not be easily measured by numerical and verbal tests. Therefore, the definition of intelligence within the theory of multiple intelligences model is an individual's ability to make or offer a service valued by others and to solve problems that are encountered on a day-to-day basis.¹¹

⁷ See, Kendra Cherry, *Emotional Intelligence – What It Is and Why It Matters*, ABOUT.COM, <http://psychology.about.com/od/personalitydevelopment/a/emotionalintell.htm> (last visited Apr. 10, 2013).

⁸ Howard Gardner published his thesis proposing the theory of multiple intelligences in 1983. See HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (3rd ed. 2011).

⁹ Many theories exist, but this is beyond the scope of this paper. Overall, it can be said that academics agree that there are different areas of intelligence.

¹⁰ Salovey, *supra* note 6, at 4-6.

¹¹ Howard Garner, the pioneer of the theory of multiple intelligences, identified nine areas of multiple intelligences. “(1) Linguistic Intelligence is the capacity to use language to express what’s on ones mind and how to understand other people through the use of language, (2) Logical/Mathematical Intelligence is the capacity to understand the underlying principles of some kind of causal system, (3) Musical Rhythmic Intelligence is the capacity to think in music, to be able to hear patterns, recognize them, and perhaps manipulate them, (4) Bodily/Kinesthetic Intelligence is the capacity to use one’s whole body or parts of one’s body to solve a problem, make something, or put on some kind of production, (5) Spatial Intelligence is the ability to represent the spatial world internally in one’s mind, (6) Naturalist Intelligence is the ability to discriminate among living things and sensitivity to other features of the natural world, (7) Intrapersonal Intelligence is having an understanding of oneself, knowing who one is, what one can do, what one desires to do, and how one reacts to things,

Despite the variations that have developed since the basic theory of multiple intelligences was initially announced, academics who have performed further research on each of the particular branches are in agreement that social intelligence exists. Because of the varying levels of conceptualization of the theory of a social intelligence¹², for the purposes of this paper I will rely upon the theory promulgated by Salovey and Mayer, the most respected among social psychologists.¹³

1. The Rise of Emotion: In What Context Does Emotional Intelligence Arise?

In the Salovey and Mayer model of emotional intelligence, the phenomenon of experiencing emotions is as follows: first, an external or internal event will occur. In response to the event, an individual will be either positively or negatively affected in some way. The effect could be either tangible or intangible. The emotion, or a mixture of emotions, will arise in the wake of the event as a manifestation of the individual's perception of the event's effects upon him.¹⁴ The event-impact emotion model is intuitive because it is something experienced by all on a day-to-day basis.

(8) Interpersonal Intelligence is the ability to understand other people, (9) Existential Intelligence is the ability and proclivity to pose and ponder questions about life, death, and ultimate realities.” According to the theory of multiple intelligences, one form of intelligence is not preferable over another, and instead, each is equally viable and valuable. An individual may possess more than one of these intelligences in different degrees. *See generally, Theory of Multiple Intelligences*, PBS.COM, http://www.pbs.org/wnet/gperf/education/ed_mi_overview.html (last visited Apr. 10, 2013).

¹² Beyond the scope of this paper, some contend that emotional intelligence may overlap with personality traits or individual creativity. *See generally*, KEVIN R. MURPHY, A CRITIQUE OF EMOTIONAL INTELLIGENCE (Lawrence Erlbaum Assoc., Inc. 2006); Jeffery M. Conte, *A Review and Criticism of Emotional Intelligence Measures*, 26 J. ORGANIZ. BEHAV. 433, 433-440 (2005).

¹³ The existence of a social intelligence has become axiomatic in the field of organizational behavior. *See generally*, Salovey, *supra* note 6; Peter Reilly, *Mindfulness, Emotions, and Mental Models: Theory that Leads to More Effective Dispute Resolution*, 10 NEV. L.J. 433, 436-438 (2010).

¹⁴ Salovey, *supra* note 6, at 61-80.

An example of the event-impact-emotion sequence would be as follows: Person A leaves work and walks to his car to go home for the night. Once arriving at his car, Person A reaches in his pocket and realizes that he left his car keys on his office desk. Person A is annoyed to walk back inside, mainly because it is very cold outside, and he would like to leave the office to avoid traffic. Here, the external event would be Person A leaving the car keys on his desk. In response to the event, leaving the keys on the desk, Person A was negatively affected because he had planned on leaving work at a certain time and also did not want to walk back to the building in the cold. The effects are both tangible and intangible: tangible because he remained outside and faces a greater likelihood he will drive in traffic on the way home, and intangible because of the time Person A spends walking back to the building. Based upon the above facts, Person A was annoyed. Changing the facts around, if Person A had been seeking a promotion at work and did not mind going back into the building to get his keys, as a way to speak with his boss about his latest project, Person A instead might have been content with returning to the building.

2. The Response to Emotion: Applying Emotional Intelligence

Once an event has occurred, the effect realized by the individual and the subsequent emotion has arisen, the next point to ascertain is the individual's response to the emotion. At this juncture, emotional intelligence intervenes. The general area of emotional intelligence can further be divided into four sub-branches that facilitate in the understanding of what occurs once emotions have arisen.¹⁵ Similar to Maslow's hierarchy, the branches are arranged in ascending order, from the most basic processes to the most integrated processes. The four branches are (1) "emotional perception and expression," (2) "emotional facilitation of thought," (3) "emotional understanding," and (4) "emotional management."¹⁶

The first branch, "emotional perception and expression," deals with the most fundamental and foundational aspects of emotional intelligence: one's ability to identify, to perceive, and to

¹⁵ *Id.*

¹⁶ *Id.*

express emotions.¹⁷ To recognize emotions, individuals rely on external cues or tip-offs such as facial expressions, body language, and vocal intonation.¹⁸ To provide a further breakdown of the branch of emotional perception and expression, one is capable of identifying emotions in oneself and others, as well as the ability to accurately express one's own emotions and to be able to distinguish authentic and phony emotional expressions of others.¹⁹ An example would be the following: Person C smiles, and Person D identifies the emotion experienced by Person C as happiness. When Person C smirks, Person D can discern it as a phony smile, thus not an indication of happiness, but instead an indication of Person C's arrogance or self-satisfaction.

The second branch of emotional intelligence involves the "emotional facilitation of thought."²⁰ Building upon the first branch, an individual's ability to identify emotions, the goal in the second branch is to master the ability to reason with emotions.²¹ In order to do so, the individual utilizes the emotions he or she is experiencing to promote his or her ability to think about a particular issue.²² For example, an individual can use his or her emotions to prioritize events. Certain strong emotions interrupt cognitive functions, and the individual will be required to re-direct attention to the strong emotions experienced. Hypothetically, if Person A were walking to his car at night thinking about a work assignment, but then heard footsteps behind him, the emotion fear would arise, and he would stop thinking about work and run for safety. Salovey and Mayer concluded that the emotional facilitation of thought can lead to "more effective reasoning, decision-making, problem solving, and creative expression."²³

¹⁷ *Id.* at 64.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ More specifically, reasoning with emotion allows an individual to "(1) use emotions to redirect attention to important events, (2) generate emotions that facilitate judgment, memory and decision making, (3) use mood swings as a way to consider and appreciate, multiple points of view, and (4) use different emotions to encourage creativity and different approaches to problem-solving and creativity." *Id.* at 64.

Further establishing the branches of emotional intelligence, the third branch, “understanding emotion,” emphasizes the internal emotion that an individual experiences and the meaning behind it.²⁴ The experiencing individual, therefore, must determine the event that triggered the emotion and further must establish what the emotion means in the context of the particular situation.²⁵ Most elementary, an individual is able to place a label on the emotion he or she is experiencing.²⁶ For example, “I am annoyed” or “I am angry.”²⁷ Furthermore, the individual is able to pinpoint the emotion, how it relates to the other emotions they experience, the how it can change if the source of provocation does not cease. For example, if Person A walked out to his car after work on Day One and forgot his keys, on Day Two forgot his briefcase, on Day Three forgot his wallet, and Day Four forgot his phone, on Day Five, instead of annoyance, he may experience anger. The trigger in this hypothetical would be Person A’s forgetfulness as the trigger of annoyance, and the continuous forgetfulness could lead to an escalation to anger. Person A would have to realize that the trigger is his forgetfulness, i.e. “if the event causing the annoyance continues, it can lead to anger,” and then create a way to remember his belongings to avoid further escalation.²⁸

The final branch, the most complex and highest level of emotional intelligence is “emotional management,” or “emotional regulation.”²⁹ The management of emotions encompasses the individual’s ability to regulate his or her emotions and to respond appropriately to the emotions of others.³⁰ As the common proverb “Think before you act” implies, the goal is not to eliminate emotions per se, but instead to learn how to control emotions.³¹ Instead of suppressing or downplaying the emotions of others, the regulation of emotions involves harnessing the emotions of others and using them to the individual’s advantage.³² Salovey and Mayer

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

compare this ability to regulate emotions to a “persuasive speaker [who] is said to ‘move’ his or her audience.”³³

III. The Impact of Emotional Intelligence in Mediation

Academics generally agree that there is more to being a mediator than merely demonstrating knowledge and skills.³⁴ A great mediator is said to be hard to describe, but as one practitioner has said, “You’ll know it when you see it.”³⁵ Some have further divided the mediator’s career into three distinct stages of development: first, mastering technique; second, the intellectual grasp of mediation; third, awareness of how a mediator’s personality affects the mediation process.³⁶ Particularly in the mediation setting, an understanding of emotions, internally and externally, is critical to successfully aiding parties in reaching a settlement. How can a mediator use emotional intelligence to his or her benefit during mediation? One must contemplate how emotions influence actions and behaviors in the context of mediation.

Emotions inevitably arise during mediation and can potentially be one of the greatest impediments to parties reaching a settlement. Strong emotions are paradoxical; they are both a cause of and a result of conflict. People in conflict may have a variety of strong, and often negative emotions. These emotions often mask the substantive issues in dispute. However, in addition to the substantive issues, the emotions, too, are real and must be dealt with. In the seminal book *Getting to Yes*, the authors highlight the importance of emotion in the context of negotiation.³⁷ When describing the role of emotions in the process, the authors state that in negotiation, particularly in bitter disputes, the feelings of the

³³ Specifically, emotional management provides one with the ability to “(1) be open to one’s feelings, both pleasant and unpleasant, (2) stay aware of, monitor and reflect upon emotions, (3) engage, prolong, or detach from an emotional state, (4) manage emotions in oneself, and (5) manage emotions in others.” *Id.*

³⁴ See BRINGING PEACE INTO THE ROOM, *supra* note 3, at 5-40.

³⁵ See, Velikonja, *supra* note 2, at 277. (citing an interview with a practitioner)

³⁶ *Id.*

³⁷ Note that although Fisher and Ury discuss emotions in the context of negotiations, however, there are overlaps in aspects of both the processes involved in mediation and negotiation, therefore, the research is useful when examining mediation. ROGER FISHER & WILLIAM URY, *GETTING TO YES* 31 (2011).

participants may be more important than the discussions in which they engage.³⁸ Because the development of emotion on one side generates a reactionary emotion on the other, emotions may bring negotiations to an impasse or an end.³⁹ Emotions play a similar role in mediation. Thus, the mediator is present to reduce the likelihood of the escalation of these emotions, or if these emotions indeed arise, the mediator must be well equipped to mitigate the effects of the emotions during the process and be able to assist the parties in moving forward past these volatile emotions. Moreover, in the mediation context, the mediator is selected based on his or her ability, as perceived by the parties, to assist in settling the case. The mediator must be prepared not only to control his or her own emotions but also to be prepared to regulate the inevitable emotions that will arise. When applying the emotional intelligence model to the role of the mediator, the role of emotional intelligence may very well be the *je ne sais quoi* of the mediator.

First, as conflict arises, the mediator must be able to accurately perceive and identify the emotions as they unfold through the course of the mediation. In the Salovey and Mayer model, this understanding would be the first branch involving the “identification and perception of emotions.”⁴⁰ If a mediator is capable of noticing a change in the expressions of the participants or an emotion that appears to be artificial, the mediator may take note of the external manifestation of emotion and use in the later branches. In order to identify emotions, a mediator may rely upon non-verbal signals, such as body language and facial expressions, which are generally indicators of a shift in the emotions of parties and counsel.

With respect to reasoning with emotions, if a mediator successfully identifies emotion, he or she will be better equipped to redirect attention to important issues. For example, when reframing an issue, the mediator may use different language to convey the same situation or may relay the same facts from a different perspective. Additionally, reasoning with emotion will assist a mediator with empathetically listening to participants and will

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Salovey, *supra* note 6, at 64-65.

allow the mediator to observe, to identify, and to respond to the emotions underneath the words when responding.⁴¹

Regarding an understanding of emotion, when one must interpret the cause of the emotion and then reason what it might mean, a mediator would be more readily able to determine parties' reactions to settlement offers and statements made throughout the course of the mediation, to connect those individual emotional reactions, and to understand potentially the likelihood of concessions and where a party might move from a position he or she has taken. For example, as described in the second branch, if each time opposing counsel enters the room and the injured individual becomes silent and this pattern continues, the mediator may elect to conduct the remainder of the sessions in caucuses versus having the two individuals in the same room together. This understanding may be useful when a mediator is attempting to manage positional bargaining respectively, or to identify party interests and develop options for settlement.

Finally, because many emotions surface during the mediation process, it is important for the mediator to remain neutral by regulating his or her own emotions throughout the process in order to prevent those emotions from influencing the process, or worse, interfering. It is particularly important in the context of mediation because of the many emotions brought to light during this cathartic process. When working with attorney representatives and their clients, it is critical for the mediator to be able to manage the difficult emotions that may surface during the process. To assist parties' dealing with conflicts, mediators must be able to listen and show they understand, show empathy to parties, and create an atmosphere of openness where parties are likely to express their opinions more freely.⁴² The mediator's skill in handling emotion will be one of the aspects participants perceive and most likely be what participants remember, and subsequently base their opinions and recommendations upon, thus influencing potential future jobs.

⁴¹ JAY FOLBERG, DWIGHT GOLANN, THOMAS J. STIPANOWICH & LISA A. KLOPPENBERG, *RESOLVING DISPUTES: THEORY, PRACTICE, AND LAW* 301 (Vicki Been et al. eds., 2nd ed. 2010).

⁴² *Id.*

IV. “Learning” Emotional Intelligence

Studies have shown that Emotional Intelligence is partially hereditary and otherwise developed at a young age; however, it can be developed and learned by individuals as adults.⁴³

Studies show there are some individuals who are inherently born with and possess a greater proclivity toward emotional intelligence due to hereditary background and genetic composition. These individuals will naturally be more attuned to understanding their emotions as well as emotions of others.⁴⁴ Related studies show individuals are genetically hardwired to handle conflict in a particular way.⁴⁵ In the context of mediation, these are the individuals who can intuitively employ all four branches simultaneously, by sensing a shift in the emotional aura in the room, identifying the shift in the moment, understanding the origin of the change in dynamic, and addressing the changing emotional state naturally.

Second, there are those individuals who, at a young age, because of their environmental surroundings, learn to address these emotional situations after exposure to many similar situations, and can rapidly adjust to address these changes.⁴⁶ Generally, these individuals have been placed in situations in which they are required to learn the four branches of emotional intelligence and will draw on past situations and analogize those to what is unfolding before them.⁴⁷

Third, there are those who, as adults, are aware of the importance of emotional intelligence and practice the art of mindfulness by carefully cultivating and refining their understanding.⁴⁸ These are also individuals who proactively seek

⁴³ R.J. Emmerling & Daniel Goleman, *Emotional Intelligence: Issues and Common Misunderstandings*, THE CONSORTIUM FOR RESEARCH ON EMOTIONAL INTELLIGENCE IN ORGANIZATIONS, 1 (Jan. 25, 2014), http://www.eiconsortium.org/pdf/EL_Issues_And_Common_Misunderstandings.pdf.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

to develop a greater understanding of those surrounding them and themselves.

By way of an analogy, will I ever play the piano as well as Mozart? Despite the numbers of lessons and hours of practice I engage in, I am almost certain it will never happen, and I will never rise to the level of a musical prodigy. If I took piano lessons as a child, practiced for quite a bit, and continued to play, would I be better? Yes. And if I wake up tomorrow morning with the urge to become a pianist and partake in those same lessons and hours of practice, will I be better than if I had not at all? Probably yes. Therefore, emotional intelligence can increase just as one's knowledge base can increase.

V. Improving Upon Emotional Intelligence

Studies by organizational behaviorists and social psychologists have shown that certain activities can be done to improve and develop emotional intelligence. In order to do so, one should develop the skills involved in each of the four branches progressively. First, one should fine-tune one's perception of emotions. Certain aspects of emotions are the same, despite the context in which they arise. Unusual in law but common in other fields, an individual may seek to take courses in learning about behavioral tip offs to emotion. For example, the FBI goes through intensive training on subtle indicators in order to understand a spectrum of emotions, such as to when someone is lying, honest, sad, or angry. Accordingly, learning to be more sensitive to the subtle signs of emotions in others, facial, vocal, and posture, techniques are already established on how to teach these methods effectively.⁴⁹ Academic courses explain methods to read faces and body language and require participants to think about a connection, or disconnection, between the two.⁵⁰ These are learnable skills and can be acquired within a few hours.⁵¹ Behavioral training can assist a mediator in foreseeing the escalation of conflict or in breaking an impasse if already reached.

⁴⁹ See, Reilly, *supra* note 13, at 451.

⁵⁰ Mark I. Sirkin, *Managing Your Brain – A User's Guide*, 82-SEP N.Y. ST. B.J. 38, 41 (2010).

⁵¹ See, Reilly, *supra* note 13, at 450.

The second level --- reasoning with emotions --- involves interacting with the participants and their legal representatives; thus, it would be beneficial to receiving training in handling emotional conflict. One suggestion made was to allow mediators to hire professionally trained “coaches” who would assist individuals in reaching a greater understanding of the process of conflict resolution and practicing new ways of handling emotional conflict.⁵² Alternatively, one may choose to keep a daily journal in order to reflect upon certain experiences.⁵³ By writing about one personally significant event each day, one will learn to be more sensitive to emotional cues and to learn how emotions are connected one to the other. Even thinking about emotions in this manner may assist in rewiring the brain to become more emotionally astute. To improve upon the third branch, understanding emotions, one may seek to learn more about psychology. By understanding certain distinct personality types, and how these types may react to certain stimuli in specific situations may be useful.⁵⁴

Finally, the fourth branch --- managing emotions --- requires one to control emotions, thus, one may elect to engage in mindfulness training.⁵⁵ Feelings can significantly impact one’s thoughts, both what one thinks about and the way in which one thinks about it.⁵⁶ Because the mediator’s mood and emotions can impact the mood and emotions of the parties involved, the mediator should be mindful of the emotions he or she displays during the mediation to ensure that beneficial moods are reached maintained.⁵⁷ Mindfulness can assist mediators because it provides methods for calming the mind, concentrating, experiencing compassion and empathy, and achieving an awareness of thoughts, emotions, and habitual impulses that could potentially interfere with making good judgment, building rapport, and motivating

⁵² *Id.*

⁵³ Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOTIATION L. REV. 1 (2002).

⁵⁴ Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, or Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1254 (2004).

⁵⁵ See, Riskin, *supra* note 53, at 41.

⁵⁶ See, Rosenberg, *supra* note 54, at 1236.

⁵⁷ See, Reilly, *supra* note 13, at 447.

others.⁵⁸ More specifically, mindfulness allows mediators to make better judgments about how the mediation process should work because it enables them to maintain a focus on goals and to maintain moment-to-moment awareness with themselves and others.⁵⁹ Mindfulness can also assist lawyers in overcoming barriers to attentive listening, including distracting thoughts and emotions, personal agendas, and bias and prejudice based upon the speaker's appearance, ethnicity, gender, speech or mannerism.⁶⁰ Studies have shown that this technique is particularly lacking in the legal field, and some academics have already begun implementing programs into law school curricula.⁶¹ However, one may be to practice yoga, an exercise that incorporates mindfulness training, or even begin to meditate daily to ground oneself and gain a greater awareness of self and one's place in the world.⁶²

VI. Conclusions and Practical Implications

If looking to improve upon emotional intelligence, practitioners should be wary of programs that preach transforming lawyers into impeccable mediators. Practitioners should also distinguish between the actual skills and techniques of the mediator, and the emotional intelligence one must possess to become a mediator.

If one does not possess emotional intelligence, one may still be a talented mediator. Mastery of fundamental skills is critical, and of the three phases of a mediator's career previously identified as mastering technique, intellectual grasp of mediation, and awareness of how a mediator's personality affects the

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See*, Riskin, *supra* note 53, at 50.

⁶¹ Harvard Law School has pioneered the implementation of mindfulness training in law school academia. Both The Program on Negotiation (PON) at Harvard Law School and the Harvard Negotiation Law Review have held events on Mindfulness in Law as well as Mindfulness in ADR. Similarly, other law schools offer courses and training for students. *See generally* Leonard L. Riskin, *Contemplative Practices in Law Schools*, THE ASSOCIATION OF AMERICAN LAW SCHOOLS, [http://www.aals.org/am2006/program/balance/riskin.outline..pdf](http://www.aals.org/am2006/program/balance/riskin.outline..pdf;).; THE MINDFUL LAWYER – 2010 CONFERENCE, <http://www.mindfullawyerconference.org> (last visited Jan. 25, 2014).

⁶² *Id.*

mediation process, one cannot reach the last step without a firm foundation in the previous two. Studying emotional intelligence will not improve upon this, cannot substitute it, and will only bolster the mediator's skills when working with parties' and their representatives. The emotional intelligence is the *je ne sais quoi* – the element that transforms a good mediator into a great mediator. As a criterion to consider, practitioners should consider a mediator's emotional intelligence, which most likely corresponds with the success of the mediator.