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## **The Parts Are Greater Than the Sum: What I Learned From My Mediation Clinic Students**

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**THE PARTS ARE GREATER THAN THE SUM:  
*What I Learned From My Mediation Clinic Students***

*Floralynn Einesman\**

I.	<b>Introduction</b> .....	4
II.	<b>Background</b> .....	6
III.	<b>Survey Design</b> .....	11
IV.	<b>The Data and Method</b> .....	12
	Respondents .....	12
V.	<b>Analysis of Survey Data and Results</b> .....	13
	<b>A. Response Rate and Biographical Data</b> .....	13
	a. Rate of Response.....	13
	b. Potential Flaws in the Data .....	14
	c. Age and Gender .....	15
	d. Class Year and Teacher Representation .....	16
	e. Employment History .....	16
	<b>B. The Respondents’ Mediation Experience</b> .....	17
	a. Volunteer Mediator .....	18
	b. Paid Mediator.....	18
	c. Type and Frequency of Mediations .....	19

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<b>C. Mediation Techniques</b> .....	24
a. Use of Techniques in Professional Mediations.....	24
b. Use of Techniques in Professional Life.....	26
c. Use of Techniques in Personal Life .....	29
<b>D. Motivation for Taking the Class</b> .....	32
a. Alternative Dispute Resolution.....	33
b. Practical Experience outside the Classroom .....	33
c. Interest in Becoming A Mediator in the Future .....	34
d. Improve Communication Skills .....	34
e. Help People.....	35
<b>E. Interest in Becoming a Mediator</b> .....	35
Enjoyed Mediation Process and Appreciated Results .....	36
<b>F. Effect On Choice of Employment or Ability To Get Job</b> .....	36
<b>a. Effect Learning Mediation Techniques Had on Employment</b> .....	36
1. Effect on Choice of Employment .....	36
2. Effect on Ability to get a Job .....	37
i. Little Job Choice .....	38
ii. Already Had Job before Taking Class/ Interested in Another Area of Law .....	38
iii. Difficult to Mediate Immediately out of Law School .....	39
iv. Less Adversarial Way to Practice Law.....	39
<b>b. Effect Mediating Live Disputes Had on Employment</b> .....	39
1. Effect on Choice of Employment .....	39
2. Effect on Ability to get a Job .....	40

i. Practical Experience .....	41
ii. Communication Skills .....	41
iii. Confidence.....	42
iv. No it did not help .....	42
<b>G. Additional Comments</b> .....	<b>43</b>
i. Great Class .....	43
ii. Practical Skills .....	44
iii. Highly Recommended .....	45
iv. Favorite Class .....	45
<b>Conclusion</b> .....	<b>45</b>
<b>Appendices</b> .....	<b>47</b>

## I. Introduction

By nature, I am a very curious person. As I am reading a novel, I often want to read the last page first, or, while I am watching a movie plot unfold, I want to know how the film ends. Not surprisingly then, my initial motivation in undertaking this study was my inherent curiosity--whether the graduates of the Mediation Clinic, a clinic I had co-created and co-taught, were serving as mediators and/or using the skills they had learned in the clinic outside of mediation. Once I began designing the study, however, I realized that it could serve more valuable functions—it could help determine whether our goal of training future mediators was being accomplished, and whether participation in the clinic was leading to any other beneficial outcomes.

I co-created the Mediation Clinic<sup>1</sup> at California Western School of Law (hereafter CWSL) with my colleague Linda Morton in 1996 to provide students the opportunity to learn the process of mediation and to mediate live disputes in the community.<sup>2</sup> We recognized the importance of “soft skills”<sup>3</sup> such as communication, collaboration, initiative, and adaptability<sup>4</sup> and therefore we sought to create an experiential learning opportunity for the students that encouraged them to nurture those skills. We wanted to teach students conflict resolution skills and to have them work together to use those skills to help individuals in the community resolve actual disputes. Simultaneously, we sought to expose the students to an underserved population with whom most of them were not acquainted<sup>5</sup> (incarcerated juvenile offenders) and to show them the value of helping others resolve their disputes peacefully, in a non-adversarial way. Moreover, we sought to teach the students that their new role as mediator required them to act professionally and ethically.

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<sup>1</sup> Initially, the class was called Advanced Mediation, which we created as a follow-up to the school’s basic course in Mediation, Alternative Dispute Resolution, or Mediation Advocacy. We have recently changed the name of the class to “Mediation Clinic,” which better describes the structure, goals, and pedagogy of the class, which essentially is a clinic that teaches the students various mediation techniques and then sends them into the community to mediate disputes with actual disputants. Because we changed the name after I undertook this study, in this article I use both terms.

<sup>2</sup> For a full description of the history and goals of this mediation program, see Floralynn Einesman & Linda Morton, *Training A New Breed Of Lawyer: California Western’s Advanced Mediation Program in Juvenile Hall*, 2002 Cal. Western L. Rev. 53 (2002); and Linda Morton & Floralynn Einesman, *The Effects of Mediation in a Juvenile Incarceration Facility: Reduction of Violence Through Transformation*, 49 Clev. St. L. Rev. 255 (2001).

<sup>3</sup> “‘Soft skills’ refer to a cluster of personal qualities, habits, attitudes and social graces that make someone a good employee and compatible to work with. See, e.g., Kate Lorenz, *Top 10 Soft Skills for Job Hunters*, AOL (Jan. 26, 2009), <http://jobs.aol.com/articles/2009/01/26/top-10-soft-skills-for-job-hunters/> (identifying a strong work ethic, good communication skills, problem-solving skills, including taking ownership of the problem, acting as a team player (collaboration), flexibility/adaptability, as key soft skills).” Susan Watrose, *What Do Legal Employers Want to See in New Graduates? Using Focus Groups To Find Out*, 39 Ohio N.U. L. Rev. 505, fn 87 (2013).

<sup>4</sup> Mina Welsch et al., *Teaching and Assessing Soft Skills*, MASS – Measuring and Assessing Soft Skills, 28, 33 (2011), [http://www.mass-project.org/attachments/396\\_MASS%20wp4%20final%20report%20part-1.pdf](http://www.mass-project.org/attachments/396_MASS%20wp4%20final%20report%20part-1.pdf).

<sup>5</sup> In placing the student mediators in a juvenile detention facility to mediate with incarcerated adolescents, we recognized the importance of empathy and sought to cultivate the students’ ability to empathize. See Einesman & Morton, *supra* note 2. For the value of teaching empathy in law school negotiation classes, see for example: Jennifer G. Brown, *Deeply Contacting the Inner World of Another: Practicing Empathy in Values-Based Negotiation Role Plays*, 39 Wash U. J. L. & Pol’y, 189, 194-203 (2012); Susan S. Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 Santa Clara L. Rev. 795, 857 (2012).

The class is always small, 16 or fewer students. For 14 weeks, the class meets once a week for 2.5 hours. There is also one intensive weekend training in mediation, when students learn the stages of the process and conduct simulated mediations.

During the weekly classes, we teach the students various conflict resolution skills, such as active listening, reframing positions to interests, and dealing with difficult disputants. Additionally, we facilitate a debriefing about the students' mediations at Small Claims Court and Juvenile Hall. The students share information about the techniques they used, the effectiveness of these techniques, and the lessons they learned from their experiences.<sup>6</sup>

The Mediation Clinic is different from many doctrinal classes at CWSL. While the latter classes often have an enrolment exceeding 50 students, the clinic has a maximum enrollment of 16. This allows for a different learning environment, where teacher and student can get to know each other and the classroom experience can be more supportive and interactive. While many doctrinal courses are required or recommended, Mediation Clinic is an elective, often chosen by those who are either interested in pursuing a career in alternative dispute resolution or, at a minimum, in learning enough about it to decide if this is something they would like to pursue in the future. Most importantly this is an experiential learning class—where students learn the techniques of mediation throughout the semester—active listening, reframing positions to interests, using neutral language, caucusing, dealing with difficult disputants, handling cultural differences-- while they are mediating actual disputes with individuals at Small Claims Court and Juvenile Hall.<sup>7</sup>

After teaching the clinic for more than 15 years, I was curious about what its graduates were doing. I had encountered graduates occasionally and I had the opportunity to ask some of them about their professional and personal lives. We reminisced about the class and discussed its effect on their careers. Some of the graduates told me that the Mediation Clinic had a significant influence on their lives—both professional and personal. They reported that they regularly used the communication skills we taught them, even though they were not mediating. They recalled learning about cultural differences in conflict and dealing with difficult disputants and recounted that they used these methods to deal with clients, opposing counsel, and co-workers.

Nonetheless, I had no overall sense of, and how the class impacted the students who took it. In fact, I had no idea of the total number of students who had taken the course and what they were doing since graduating from law school. I did not know the number of clinic graduates who were serving as full-time paid or, even part-time volunteer, mediators.

Consequently, I set out to ascertain the number of graduates who were currently mediating or had mediated in the past; the number of graduates who were mediating for money or as a volunteer; the number of graduates, who were mediating full, or part-time and the frequency and type of mediations they were doing.

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<sup>6</sup> Through these discussions, as well as through the journals they write, we intend for students to develop their intrapersonal skills in self-awareness, self-reflection and self-evaluation. For a discussion about the value of these skills see Daicoff, *supra* note 5, at 854.

<sup>7</sup> For a full description of the history and goals of this mediation program, see Einesman & Morton, *supra* note 2; and Morton & Einesman, *supra* note 2.

Furthermore, I wanted to learn whether and how often the graduates used the various skills we taught them, either during their mediations or during their professional or personal lives. I also sought to discover their motivation for participating in the Mediation Clinic and whether they were interested in becoming a mediator before taking the class, and whether their level of interest was affected by their participation in the clinic.

I was surprised, thrilled, and a bit disappointed by the results. I was surprised that over 50% of the graduates responded to the survey--this far exceeded the response rate I was expecting. I was thrilled that 90% or more reported using some of the communication techniques we taught them in their professional and personal lives. But I was also a bit disappointed that only 9% of the respondents had served as a paid mediator and only 23% had served as a volunteer mediator. I had hoped that more students would have continued in their role as neutral facilitator either for pay or pro bono.

This study afforded me the opportunity to learn what a significant number of the graduates of a clinic I co-created and taught for over 15 years were doing since their participation in the clinic. It made me reflect upon the goals of the class and its intended outcomes. It made me rethink how and why I was teaching certain skills. And, as is often the case, the students, through their responses, became the instructors—teaching me what to focus on and what to forsake.

## II. Background

It is virtually impossible to read a newspaper,<sup>8</sup> an internet site,<sup>9</sup> or a law journal,<sup>10</sup> without viewing an article about the troubled, some would say desperate, state of legal education.

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<sup>8</sup> See for example:

Ethan Bronner, *Law Schools' Applications Fall As Costs Rise and Jobs Are Cut*, N.Y. Times, Jan. 30, 2013, <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?pagewanted=all&module=Search&mabReward=relbias%3As%2C%7B%221%22%3A%22RI%3A6%22%7D>;

Lincoln Caplan, *An Existential Crisis For Law Schools*, N.Y. Times, July 14, 2012,

<http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html?emc=eta1&r=0>;

Editorial, *Legal Education Reform*, N.Y. Times, Nov. 25, 2011, <http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html?emc=eta1&r=0>;

Peter Shane, *The True Spirit of Law School Reform*, The Chron. of Higher Ed., March 12, 2014,

<http://chronicle.com/blogs/conversation/2014/03/12/the-true-spirit-of-law-school-reform/>;

Katherine Mangan, *As They Ponder Reforms, Law Deans Find Schools 'Remarkably Resistant to Change'*, The Chron. Of Higher Ed., Feb. 27, 2011, <http://chronicle.com/article/As-They-Ponder-Reforms-Law/126536/>;

David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. Times, Nov. 19, 2011,

<http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all>.

<sup>9</sup> *Core Issues*, Law School Transparency, <http://www.lawschooltransparency.com/reform/issues/> (last visited December 22, 2014); Steven J. Harper, *How Soon Before One Law School's Troubles Spread*, The Am. Lawyer Daily, Feb. 14, 2014, <http://www.americanlawyer.com/id=1202643082288/How-Soon-Before-One-Law-Schools-Troubles-Spread-?slreturn=20140704221841>.

<sup>10</sup> Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel, & Robert Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 Wash. U. J.L. & Pol'y 11, 11-12 (2014); William Henderson, *A Blueprint for Change*, 40 Pepp. L. Rev. 461, 462-464 (2013).

As law school tuition has soared,<sup>11</sup> law school applications have plummeted.<sup>12</sup> The decline in applications is closely linked to the high cost of a law school education, the concomitant student debt upon law school graduation,<sup>13</sup> and the low employment rate of law school graduates.<sup>14</sup> Commentators cite the 2007 economic recession and the resulting client demand for more economical legal services as reasons for the reduction in legal positions for new hires.<sup>15</sup> Additionally, advances in technology, resulting in changes in law firm practices, have contributed to the elimination of legal jobs.<sup>16</sup> Consequently, the employers who are hiring new graduates have become increasingly selective--demanding that those they do hire be "practice-ready,"<sup>17</sup> proficient not only in the "hard skills" of research, writing and analysis but also in the "soft skills" of interpersonal communication, professionalism, and time management.<sup>18</sup>

Even President Obama weighed in on the matter of legal education, suggesting that law school classes should be completed in two, rather than the traditional three, years.<sup>19</sup> The President opined that the third year of law school should be dedicated to working in a law firm, where

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<sup>11</sup> Paul D. Carrington, *The Price of Legal Education*, 127 Harvard L. Rev. F. 54 (2013); Brian Tamanaha, *Failing Law Schools* (Chicago Series in Law and Society, 2012).

<sup>12</sup> "Applicants have fallen by more than 37 percent since 2010, according to figures from the Law School Admission Council, offering further proof that plenty of would-be lawyers now view a law degree as a risky investment." Karen Sloan, *Law School Enrollment Slump Continues*, Nat'l L.J., July 21, 2014,

<http://www.nationallawjournal.com/id=1202663837843/Law-School-Enrollment-Slump-Continues#ixzz3Ft0Kdy8b>

<sup>13</sup> Ethan Bronner, *Law School Applications' Fall as Costs as Costs Rise and Jobs are Cut*, N.Y. Times, Jan. 3, 1990, [http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?pagewanted=all&_r=0).

<sup>14</sup> *Id.*; Employment for the Class of 2013 – Selected Findings, National Association for Law Placement, pg 1-3 (2013), <http://www.nalp.org/uploads/Classof2013SelectedFindings.pdf>; Jack Graves, *An Essay On Rebuilding and Renewal in American Legal Education*, 29 Touro L. Rev. 375, 376-378 (2013).

<sup>15</sup> Daicoff, *supra* note 5, at 805; Bronner, *supra* note 13.

<sup>16</sup> *Id.*; Robert J. Condlin, "Practice Ready Graduates": A Millennialist Fantasy, pgs 2-3 (November 18, 2014), [http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2376&context=fac\\_pubs](http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2376&context=fac_pubs).

<sup>17</sup> See for example:

Kevin Ramakrishna, *ABA Passes NYSBA Resolution on Developing Practice Ready Lawyers*, Best Practices for Legal Education (Aug. 10, 2011), <http://bestpracticeslegaled.albanylawblogs.org/2011/08/10/aba-passes-nysba-resolution-on-developing-practice-ready-lawyers>; Lisa Bang-Jensen, *August 9, 2011: New York State Bar Resolution Calls for Practice Ready Lawyers*, N.Y. State Bar Assoc. (Aug. 9, 2011)

<http://www.nysba.org/CustomTemplates/Content.aspx?id=6383>; Timothy J. Storm, *Chair's Column: Developing "Practice-Ready" Lawyers*, Ill. State Bar Assoc. (Oct. 2011),

<http://www.isba.org/sections/generalpractice/newsletter/2011/10/chairscolumndevelopingpracticeready>; Sharon D. Nelson & John W. Simek, *Hot Buttons: Why Can't Law School Graduates Write?*, Law Practice, Nov./Dec. 2012, Vol. 38 No. 6 (Magazine), available at

[http://www.americanbar.org/publications/law\\_practice\\_magazine/2012/november-december/hot-buttons.html](http://www.americanbar.org/publications/law_practice_magazine/2012/november-december/hot-buttons.html); some commentators suggest that the demand for practice-ready lawyers is merely an attempt by law firms to eliminate their cost of training young lawyers. See for example: Robert J. Condlin, "Practice Ready Graduates": A Millennialist Fantasy, pgs 16-17 (November 18, 2014),

[http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2376&context=fac\\_pubs](http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2376&context=fac_pubs).

<sup>18</sup> See notes 42-44.

<sup>19</sup> "This is probably controversial to say, but what the heck. I am in my second term, so I can say it," Mr. Obama said at a town hall-style meeting at Binghamton University in New York. "I believe that law schools would probably be wise to think about being two years instead of three years." Peter Lattman, *Obama Says Law School Should be Two, Not Three, Years*, N.Y. Times, Aug. 23, 2013, [http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/?smid=tw-nytimes&\\_r=0](http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/?smid=tw-nytimes&_r=0).



students could earn money while gaining practical, hands-on experience.<sup>20</sup>

The President's advocacy for practical training is not new. In the last thirty years, various individuals and entities have examined the topic of reforming legal education and have concluded that there is a significant need for additional training in legal education.<sup>21</sup> As far back as 1989, the Council of the American Bar Association (ABA) Section of Legal Education and Admission to the Bar established a task force to examine whether and how well law schools prepared students for the practice of law.<sup>22</sup> The task force issued its findings in the MacCrate Report, in which it concluded that the supposed gap between law school and legal practice was a misnomer and that legal education was actually a long continuum—that the students begin to learn the skills and values required to be a competent lawyer before law school, that their legal education reaches its peak during law school, but that it continues throughout the lawyer's career.<sup>23</sup>

The task force identified and analyzed fundamental skills<sup>24</sup> and values<sup>25</sup> that law schools should teach to prepare a competent legal professional. Problem Solving, Communication, Counseling, Negotiation, Alternative Dispute Resolution Procedures, and Identifying and Addressing Ethical Dilemmas were among the basic skills.<sup>26</sup> Fundamental values included Providing Competent Representation, Striving to Promote Justice, Fairness and Morality, Seeking to Advance the Profession, and Pursuing Professional Self Development.<sup>27</sup>

In 2007, the Carnegie Foundation released its two- year study of U.S. and Canadian legal education.<sup>28</sup> The Foundation found two significant shortcomings in legal education-- the lack of direct student training in the actual practice of law and the lack of attention paid to the ethical and professional obligations of legal practice.<sup>29</sup> The Foundation recommended that law schools offer an integrated approach to the study of law—teaching not only legal theory and analysis, but practical skills and professional obligations as well.<sup>30</sup>

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<sup>20</sup>“The third year, they'd be better off clerking or practicing in a firm even if they weren't getting paid that much, but that step alone would reduce the costs for the student.” Lattman, *supra* note 19.

For one of many contrary views see: Daniel Rodriguez, *Two-Year Law School Would Not Build Practice-Ready Lawyers*, U.S. News & World Report, Sept. 27, 2013, <http://www.usnews.com/debate-club/should-law-school-be-two-years-instead-of-three/two-year-law-school-would-not-build-practice-ready-lawyers>.

<sup>21</sup> See notes 22-41 and accompanying text;

<sup>22</sup> ABA Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap)* 3 (1992). Hereafter cited as “MacCrate Report”.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 138-206.

<sup>25</sup> *Id.* at 140-141; 207-221.

<sup>26</sup> *Id.* at 138-140.

<sup>27</sup> *Id.* at 140-141; For a more detailed description of the MacCrate Report and its impact, see, Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 *Clinical L. Rev.* 109, (2001); Russell Engler, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 *Clinical L. Rev.* 805 (2004).

<sup>28</sup> William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (1st ed. 2007).

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.* at 8.

In 2013, the Committee on the Professional Educational Continuum, Section on Legal Education and Admissions to the Bar, published a report reviewing the developments since the issuance of the MacCrate report and describing the current state of legal education.<sup>31</sup> It recognized that, over the last twenty-five years, in response to the various published studies, many law schools had made serious efforts to reform their curricula and to provide students with increased opportunities in clinical education and professional skills training.<sup>32</sup> Nonetheless, there remained much to be done to integrate doctrine and skills training and to confront new challenges such as the mounting cost of law school tuition and the resulting heavy debt-load for students, the decrease in the number of legal positions, the pervasiveness of technology and its impact on educating students and practicing lawyers, the globalization of legal practice, and the interdisciplinary work of attorneys.<sup>33</sup>

The call for additional professional skills training for prospective lawyers has been heard by professional organizations and state bar associations. The American Bar Association recently adopted a standard which requires that before graduation, every law student must complete at least six credits of “experiential learning”— either through a law clinic, a field placement, or a simulated course.<sup>34</sup> Furthermore, the Board of Trustees of the California Bar appointed a task force in 2012 to determine whether the State Bar should add competency training program to its bar requirements.<sup>35</sup> After discussion and study, the task force concluded that the California Bar should adopt the following competency and professionalism requirements for prospective California lawyers: 15 law school credit hours of practice-based competency training or participation in an internship or clerkship, 50 hours of pro bono or reduced fee legal services, during and after law school, and, in the first year of legal practice, 10 hours of Continuing Legal Education focused on competency training.<sup>36</sup> Consequently, the task force is now working to institute these additional bar admission requirements.<sup>37</sup>

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<sup>31</sup> Dean Mary Lu Bilek, Diane Camper, Dean Roger Dennis, Associate Dean Robert D. Dinerstein, Professor Bryant G. Garth, Professor Laura N. Gasaway, Dean Phoebe A. Haddon, Vice Dean Randy Hertz & Rebecca S. Thiem, *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar and Judiciary*, ABA pgs 1-24(2013), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/june2013councilmeeting/2013\\_open\\_session\\_e\\_report\\_prof\\_educ\\_continuum\\_committee.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf).

<sup>32</sup> *Id.* at 22-23.

<sup>33</sup> *Id.* at 12; *Consult the Index*, Aaron Kirschenfeld on Law, Science, and Miscellany, <http://www.aaronkirschenfeld.com/scholarship/law-viz/> (last visited Dec. 22 2014); *A Counterpoint to “The most robust legal market that ever existed in this country,”* The Legal Whiteboard, <http://lawprofessors.typepad.com/legalwhiteboard/2014/03/a-counterpoint-to-the-most-robust-legal-market-the-ever-existed-in-this-country.html> (last visited Dec. 22 2014 ).

<sup>34</sup> *Revise Standards for Approval of Law Schools*, American Bar Association Section of Legal Education and Admissions to the Bar 28 (August 2014), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201406\\_revised\\_standards\\_clean\\_copy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf).

<sup>35</sup> California Bar Journal, October 2012: “[Outgoing California Bar President] Jon B. Streeter set up the 21-member task force earlier this year to study the need for improved practical skills training amid growing concern that law schools were turning out students versed in legal theory, but lacking in real-world application.

<sup>36</sup> Amy Yarborough, *Boards Asks for Next Steps in Competency Training Plan*, CA Bar J. (Nov. 2013), <http://www.calbarjournal.com/November2013/TopHeadlines/TH4.aspx>.

<sup>37</sup> Laura Ernde, *Panel getting closer to sending new training requirements to Board of Trustees*, CA Bar J. (July 2014), <http://www.calbarjournal.com/July2014/TopHeadlines/TH3.aspx>.

In a recent study, 77% of all employers indicated that soft skills (skills associated with one's personality) are equally important as hard skills (skills that one learns for one's position).<sup>38</sup> 16% indicated that soft skills are *more* important than hard skills.<sup>39</sup> The surveyed employers ranked the following ten soft skills in order of priority: "a strong work ethic, dependability, a positive attitude, self-motivation, ability to work with a team, organized, ability to work under pressure, communication, flexibility, and confidence."<sup>40</sup>

Legal employers share this perspective on interpersonal skills.<sup>41</sup> Law firms have ranked strong interpersonal skills as their top priority in prospective hires.<sup>42</sup> They seek graduates who are diligent, flexible, collaborative, and professional.<sup>43</sup> "*Empirical evidence supports the notion that the soft skills of lawyers, such as judgment, maturity, dealing effectively with others, self-confidence, and problem solving are those skills that differentiate the most successful lawyers from the rest.*"<sup>44</sup> Even a survey of large corporate law firms to determine the importance of various business-methods classes, undertaken by Harvard Law School, ranked teamwork and negotiation among the top five skills that Harvard law graduates should have. As the authors of this study concluded, "*Taken together, these results suggest that law firms value softer skills and institutional knowledge as well as rigorous analytical skills.*"<sup>45</sup>

Furthermore, a recent study of newly-licensed lawyers, by the National Conference of Bar Examiners, ranked "listening" as the third most significant skill these lawyers used in their work.<sup>46</sup> Only written communication and paying attention to details ranked higher than listening.<sup>47</sup> In fact, listening outranked such other skills as issue-spotting and electronic or non-electronic researching.<sup>48</sup>

Soft skills are fundamental to the process of mediation. Consequently we spend much of our time in the Mediation Clinic teaching the students various listening techniques, professionalism and

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<sup>38</sup> *Majority of Companies Say Soft Skills Are Just As Important As Hard, According To Survey*, Human Resources Management – Compensation Guide, CCH-HRMCGD P 33048 (C.C.H.), 2014 WL 1392456 (April 2014).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Susan Wawrose, "What Do Legal Employers Want To See In Legal Graduates? Using Focus Groups To Find Out," 39 Ohio N.U.L.Rev 505, 522 (2013).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Kathleen Vinson, *Hovering Too Close. The Ramifications of Helicopter Parents in Higher Education*, 29 Ga. St. U. L. Rev. 423, fn. 51 citing Susan Daicoff, (S)Killing Me Softly: Unifying the "Soft Skills" of Law Practice and Legal Education (Synthesizing Leadership, Collaboration, Professionalism, Emotional Intelligence, Conflict Resolution, Problem Solving, and Comprehensive Lawyering), SANTA CLARA L. REV. (forthcoming).

<sup>45</sup> John Coates, Jesse Fried & Kathryn Spier, *What Courses Should Law Students Take? Harvard's Largest Employers Weigh In*, HLS Program on the Legal Profession Research Paper No. 2014-12, 6, <http://ssrn.com/abstract=2397317>.

<sup>46</sup> *Summary of the National Conference of Bar Examiners Job Analysis Survey Results*, National Conference of Bar Examiners (Jan. 2013), 3, [http://www.ncbex.org/assets/media\\_files/Research/Job-Analysis-Summary022514.pdf](http://www.ncbex.org/assets/media_files/Research/Job-Analysis-Summary022514.pdf).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

problem-solving.<sup>49</sup> Whether it is active listening, reframing positions to interests, paraphrasing, handling cultural differences or dealing with difficult disputants, we concentrate on teaching these interpersonal skills and having the students practice them in simulated exercises in the classroom and in actual mediations in the community.<sup>50</sup> We encourage the students to use all these tools when they are mediating actual disputes in their placements.

To nurture their intrapersonal skills of self-awareness and self-evaluation, we debrief about their use of these tools weekly after they have mediated. We ask them what, if anything, they would do differently now that they have employed these tools. We have them reflect upon the effectiveness of these techniques in the journals they write. We also advise them consistently that, after they leave this clinical experience, they will continue to use these skills in their professional and personal lives.

In undertaking this survey, I sought to ascertain whether the students continued with the lessons we had taught them—whether they were pursuing the alternative dispute resolution path they had begun in the clinic and whether, in their professional and personal lives, they continued to use the skills they had learned.

### III. Survey Design

With these goals in mind, I set out to design the survey. I examined various survey sites and chose SurveyMonkey because it was easy to navigate and relatively inexpensive to use. Moreover, it could provide me with all the information I sought to collect.

I drafted several versions of the questionnaire and I sought input from colleagues, academics from other fields, graduates of the course and research assistants. I received invaluable suggestions for possible questions and design which I incorporated.

The final written, anonymous version of the survey consisted of 32 questions. 26 questions were close-ended, providing respondents with certain possible responses.<sup>51</sup> The remainder were open-ended and allowed respondents to provide additional information if they chose to do so.<sup>52</sup>

The survey contained the standard questions regarding biographical information such as age, gender, year of graduation, year course taken, and professor who taught their class. It also asked whether the respondents had practiced law in the past and whether they were currently practicing law.

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<sup>49</sup> This is particularly challenging as millennials attend law school because these young adults sometimes lack “soft skills” such as appropriate workplace conduct and professional methods of communication. See for example: B. Stringfellow, *Millennials, Technology and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. Legal Prof. 199, 227-230 (2013). Commentators have suggested that clinical programs are the most appropriate means to teach these law students the necessary skills to excel in the workplace, including “office etiquette, the use of technology in appropriate settings and even appropriate attire.” Stringfellow.

<sup>50</sup> Scholars note that teaching “soft skills” may be challenging but that “well-supervised clinical or field placement experiences” may teach students the intrapersonal and interpersonal competencies that lawyers require. Daicoff, *supra* note 5, at 836.

<sup>51</sup> For full survey, see Appendix A

<sup>52</sup> For full survey, see Appendix A

Beyond this, I sought to ascertain the number of graduates of the course who:

- Were currently mediating and/or had mediated in the past;
- Were mediating for money, and/or mediating as a volunteer and
- Were mediating full or part time.

Additionally, I sought to discover:

- How often, and what kinds of mediations they were doing;
- Whether, and how often, they used the various skills we taught them during their mediations, and/or their professional lives and/or their personal lives;
- Their motivation for taking this course;
- Whether they were interested in becoming a mediator before the class, and whether their interest level in becoming a mediator changed after taking the class and
- Whether learning mediation techniques and/or mediating live disputes in the community affected their choice of employment and/or their ability to get a job after earning their degree from law school.

My final question was open-ended:

- Whether there was anything else they would like to tell me about mediation and/or the Advanced Mediation class they took?

#### **IV. The Data and Method:**

##### **Respondents:**

Initially it was necessary to ascertain the number and names of the students who had taken the class. This proved to be easier than I initially thought. Knowing nothing about the school's data system, I asked our assistant registrar, Petra Buhlmayer, for assistance. She responded within about 30 minutes and she provided me with a list of names of every student who had taken the class from its initiation in January 1996 to the date of the request. I was stunned to learn that we had offered the class 34 times during that period and 430 people had taken the Mediation Clinic from 1996 to 2012. I had simply never stopped to calculate the total number of students we had trained in mediation skills.

I decided to survey only the 372 alums who had taken the class between January 1996 and December 2010. I chose December 2010 as a cut-off date because I believed that this would give the graduates enough time from completion of the class to responding to the survey (approximately two years) to experience and reflect on the impact of this course. For anyone who had taken the class more recently, the time frame to experience any effects from the course was just too short.

Next, I set out to locate email addresses for these 372 alums. This was no easy task. Despite the

pervasive availability of personal information on various internet sites, it proved difficult to find email addresses for many of these graduates. Our alumni office had some information, but it was incomplete. Thankfully, I had the very able assistance of two diligent research assistants for this tedious task, Beth Carino and Magdalena Chattopadhyaya. They succeeded in finding email addresses for 279 of the 372 individuals who took the class from January 1996 to December 2010.

## **V. Analysis of Survey Data and Results:**

### **A. Response Rate and Biographical Data:**

#### **a. Rate of Response:**

372 students took the Advanced Mediation class between January 1996 and December 2010. In November 2012, we emailed written, anonymous surveys to 279 of those individuals (75%) for whom we had email addresses. We gave them four weeks to respond to the survey. We sent one email reminder about the survey.

157 of the 279 (56%) began the survey. 150 of the 279 (54%) completed the entire survey. 7 respondents (2.5%) began responding to the survey did not complete it.<sup>53</sup> I was surprised by, and delighted with, the 54% full response rate as I had been forewarned that anything above a 20% survey response rate is exceptional.

I attribute the high response rate to a number of factors: the students who take the class are self-selected--generally they take this class because they are interested in alternative dispute resolution and/or experiential learning. They are often uncomfortable or dissatisfied with the traditional law school curriculum. Consequently they tend to form a strong connection to this class and to us their teachers.

Furthermore, the students form a strong bond to the class, the teachers and their classmates. As I mentioned earlier, the class is always small, 16 or fewer students. This allows for close bonds to develop between the students and between the students and the teachers. The students mediate in pairs, and they often rotate partners. This allows them to collaborate, to get to know each other very well, and to learn to depend on each other.

Additionally, as mentioned earlier, we meet for one 2.5 hour period each week for 14 weeks. Again this is a significant amount of time to spend together, learning skills, debriefing about their mediations and learning from each other's experiences. In these debriefings, we encourage students to share their positive, as well as their negative, mediation experiences. As a result, we build an environment of trust, where students feel comfortable discussing both their "failures" as well as their "successes." Consequently, rather than competing as they do in other law school classes, the students in the clinic are supportive of and collaborative with each other.

Moreover, the students undergo a real transformation in this class. They enter the class as neophytes, apprehensive and inexperienced. Generally they leave as confident, experienced mediators. Unlike most other law school classes, this one provides them with observable skills. To their great satisfaction, throughout the course, they get to use these skills to resolve disputes

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<sup>53</sup> I have only included and analyzed results concerning the 150 individuals who completed the entire survey.

between people in the community. Often, those they help are extremely appreciative and vocal in their gratitude. This immediate and positive feedback differs significantly from their other law school experiences where feedback is often distant and sometimes fairly critical.

Furthermore, we ask them to reflect on their progress and to write about it in a series of journals they submit to us.<sup>54</sup> This allows them to consider their growth throughout the course and to leave with a sense of accomplishment and pride in their newly-developed skills.

Additionally, along with a link to the electronic survey, I sent each graduate an introductory and a follow-up letter. It was not the typical generic letter from their alma mater asking for money. It was a personal letter that described my research, relayed that my work depended on their responses, and asked for their input on an academic experience they had shared.<sup>55</sup>

Finally, to satisfy full disclosure, I must add that I offered a significant incentive to those completing the survey. Upon the advice of a friend who often conducts surveys, I also offered the respondents some possible rewards for completing the survey: a new ipad to one respondent, and a \$10 Amazon gift card to ten respondents, who I selected randomly after I closed the survey.<sup>56</sup> I suspect that this offer served as a significant incentive for a number of them.

#### **b. Potential Flaws in the Data:**

There are potential flaws in the data I have collected. For example, some of the respondents did not follow the instructions closely, and, therefore, they did not skip questions they were instructed to skip. Thus, they provided answers that were not relevant (i.e., none of the above or other) when in fact they should not have been answering the question at all. The converse is also true--some respondents answered questions in the affirmative, which then led them to inquiries for additional information. Despite their affirmative answer to the initial question, they skipped the subsequent questions. Many of the respondents took the class several years ago. Their memories of the course may be murky due to the passage of time. They may have exaggerated their positive or negative clinical experiences now that they are hard at work in the “real world.”

Moreover, because the Mediation Clinic is not a required course, it is among the electives that students may choose to take. As such the students who enroll in the clinic are already a self-selected population who may be biased in favor of mediation and experiential learning classes.

Additionally, I received responses from only about half of those to whom I sent surveys. Again, these responses are self-selected—they may be from only those graduates who felt favorably about the clinic. Finally, not everyone provided comments for their close-ended responses. Perhaps those who provided comments were more interested in mediation or felt more positively about their experiences. Consequently, the data I have drawn from those comments may also be skewed.

#### **c. Age and Gender:**

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<sup>54</sup> See *supra* note 6 and accompanying text.

<sup>55</sup> See Introductory Letter, Appendix B and C

<sup>56</sup> See Introductory Letter, Appendix B and C

The respondents ranged in age from 21 to 60+, with the largest percentage in the 30-39 range. Substantially more females<sup>57</sup> responded to the survey than males.<sup>58</sup>

<i>AGE</i>	<b>Response Percent</b>	<b>Response Count</b>
<b>21-29</b>	13%	20
<b>30-39</b>	66%	99
<b>40-49</b>	14%	21
<b>50-59</b>	5%	7
<b>60 or older</b>	2%	3
	<b><i>Total Number of Respondents</i></b>	<b>150</b>

<i>GENDER</i>	<b>Response Percent</b>	<b>Response Count</b>
<b>Female</b>	64%	96
<b>Male</b>	36%	54
	<b><i>Total Number of Respondents</i></b>	<b>150</b>

**d. Class Year and Teacher Representation:**

The 150 respondents derived from classes throughout the period of 1996 to 2010, with the highest number taking the class in 2010 (18) and the lowest in 1996 (2).

Of the 150 respondents, 58 took the class with Linda Morton (39%), 47 took the class with me (31%), and 45 took the class when Linda Morton and I taught the course together (30%);

<b><i>Which professor taught you Advanced Mediation at CWSL?</i></b>	<b>Response Percent</b>	<b>Response Count</b>

<sup>57</sup> This discrepancy was not surprising. Of the 372 students who took the Advanced Mediation class between January 1996 and December 2010, 212 were female (57%) and 160 were male (43%). We had addresses for, and therefore sent out the 279 surveys to: 162 females (76% of all the females who took the class) and to 117 males (73% of all the males who took the class). 96 of the 162 females (60%) and 54 of the 117 males (46%) to whom we sent surveys completed it.

<sup>58</sup> Some commentators suggest that women, rather than men, are more drawn to mediation because the process concerns the preservation of relationships and often requires the use of soft skills that women favor such as empathy, patience, and perseverance. See, for example, Giuseppe De Palo & Mary B. Trevo, *International Distinctions: How European Women See Their Mediation Practices*, 30 *Alternatives to High Cost Litig.* 98, 100 (2012); “Women’s preferred styles of interaction traditionally are more relational and less competitive than men’s.” Susan L. Brooks & Robert Madden, *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice*, 78 *Rev. Jur. U.P.R.* 23, 26 (2009). For an interesting analysis on the role of gender in mediation see Gina Brown & Andrea Schneider, *Gender Differences in Dispute Resolution Practice: Report on the ABA Section of Dispute Resolution Practice Snapshot Survey*, Marq. U. Law School Legal Studies Research Paper Series, Research Paper No. 14-04, 10 (2014), where the authors found that “women serve as mediators in over half the cases dealing with family and elder law, as well as consumer law and small claims and are well represented in labor, health and energy disputes. On the other hand, corporate, construction, insurance, and intellectual property disputes are significantly male-dominated.”



Morton	39%	58
Einesman	31%	47
Both: Morton and Einesman	30%	45
	<b>Total Number of Respondents</b>	<b>150</b>

**e. Employment History:**

93% responded that they currently had a paying job. When asked whether they had practiced law in the past 15 years, the 150 respondents answered as follows:

<i>Have you practiced law in the past fifteen (15) years?</i>	<b>Response Percent</b>	<b>Response Count</b>
Yes, I currently practice law	85%	127
Yes, I have practiced law in the past 15 years, but I do not practice law currently	9%	14
No, I have not practiced law in the past 15 years	6%	9
	<b>Total Number of Respondents</b>	<b>150</b>

We asked the respondents to tell us what type of law they were practicing. We instructed them to select *as many categories as applied to their practice*.

Out of 141 respondents, the largest number, 60, said civil litigation. The next largest numbers reported as follows: family (32); business (31); personal injury (29); corporate (25); estate, trust and probate (24), and real estate (24). The smallest number reported eminent domain (3), environmental (3), social security (3), and tax (3). No one was practicing Aviation law (0).

The 24 who selected the “other” category responded with such answers as Education Law, Government Contracts, Juvenile Dependency, Homeowners Representation, Insurance Coverage, Municipal Law, Land Use, and Probate Guardianship.

<i>If you answered yes to Question 4, please indicate what type(s) of law you currently practice or practiced during the past fifteen (15) years. Please check all</i>	<b>Response Percent out of 141</b>	<b>Response Count</b>
Appellate	7%	10
Aviation	0%	0
Bankruptcy	11%	15
Business	22%	31
Civil Litigation	43%	60
Commercial	7%	10

Construction	12%	17
Corporate	18%	25
Criminal	15%	21
Elder	6%	9
Eminent Domain	2%	3
Entertainment/Sports	4%	6
Environmental	2%	3
Estate/Trust/Probate	17%	24
Family	23%	32
Healthcare	6%	9
Immigration	5%	7
Insurance/Bad Faith	7%	10
Intellectual Property	10%	14
International	3%	4
Juvenile	8%	11
Labor/Employment	16%	22
Malpractice	6%	9
Personal Injury	21%	29
Real Estate	17%	24
Social Security	2%	3
Tax	2%	3
Worker's Compensation	10%	14
None of the Above	1%	1
Other (please specify)	17%	24
<b>Total Number of Respondents: 141</b>		

### B. The Respondents' Mediation Experience:

Since participating in the Mediation Clinic, 39 of the 150 respondents (26%) reported serving as mediators.

#### a. Volunteer Mediator:

Since taking the course, 34 respondents (23%) had served as a volunteer mediator while 116 respondents (77%) had not.

<i>Since taking CWSL's Advanced Mediation class, have you served as a volunteer (no money) mediator?</i>	<b>Response Percent</b>	<b>Response Count</b>
Yes, Full Time	0%	0
Yes, Part Time	2%	3
Yes, Occasionally (a few times a year)	21%	31

No, Never	77%	116
<b>Total Number of Respondents: 150</b>		

When asked if they were *currently* working as a volunteer mediator, 4 individuals (3%) responded that they were, while 146 (97%) were not.

<b>Are you currently working as a volunteer (no money) mediator?</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes, Full Time	0%	0
Yes, Part Time	0%	0
Yes, Occasionally (a few times a year)	3%	4
No	97%	146
<b>Total Number of Respondents: 150</b>		

**b. Paid Mediator:**

Since taking the course, 14 respondents (9%) had served as a paid mediator while 136 (91%) had not.

<b>Since taking CWSL's Advanced Mediation class, have you served as a professional (for money) mediator?</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes, Full Time	1%	2
Yes, Part Time	3%	4
Yes, Occasionally (a few times a year)	5%	8
No	91%	136
<b>Total Number of Respondents: 150</b>		

When asked if they were *currently* working as a paid mediator, 13 (9%) responded that they were while 137 (91%) were not.

<b>Are you currently working as a professional (for money) mediator? If you answered no to Questions 11 through 14, please skip to Question 20.</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes, Full Time	1.3 %	2
Yes, Part Time	2.0 %	3
Yes, Occasionally (a few times a year)	5.3 %	8
No	91.3 %	137
<b>Total Number of Respondents: 150</b>		

**c. Type and Frequency of Mediations:**

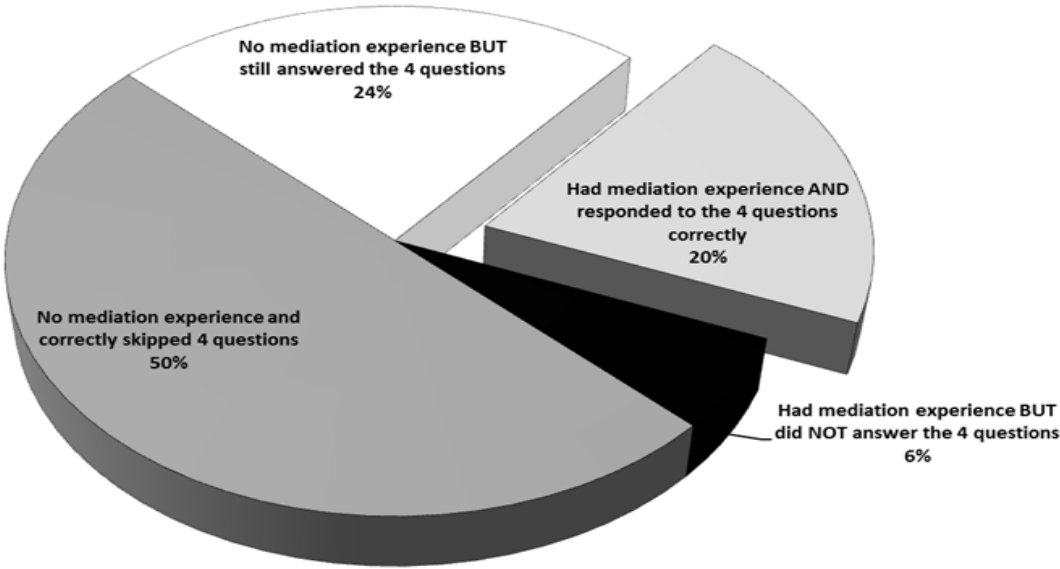
Unfortunately, the data regarding type and frequency of mediations is limited. Only 39 respondents reported as mediating, yet 66 individuals responded to the questions concerning the type and frequency of mediations they were doing.

When I reviewed the individual survey responses, I learned that many respondents were either confused by the question or did not follow the survey instructions. 75 of the 150 (50%) responded that they had no past or current mediation experience. They followed the instructions and properly skipped the four subsequent questions regarding type and frequency of mediations and mediation skills. Consequently, they provided no relevant information regarding type and frequency of mediations.

Regrettably, 36 (24%) responded that they had *no mediation experience*, but they answered one or more of the four subsequent questions by selecting an improper answer to their category as non- mediators such as none of the above, or by providing some information that was not consistent with their status as non-mediators. I eliminated these respondents' answers from the analysis concerning type and frequency of mediations.

Another 9 (6%) answered affirmatively *to having past or current mediation experience*, but they skipped the four subsequent questions or answered none of the above to one or more of them. I also eliminated their responses from the analysis concerning type and frequency of mediations.

Finally, 30 (20%) individuals responded that they either had past or current mediation experience. They did as instructed, and most answered the subsequent questions regarding type and frequency of mediations and use of mediation skills. I focused on these responses.



The largest number, 14, conducted family mediations. 12 conducted community mediations and 6 conducted juvenile mediations. 1 to 3 respondents conducted mediations in the following areas: bankruptcy, business, consumer, criminal, estate, fee dispute, international, labor, legislative policy, and personal injury.

<i>Please check from the list below, all types of professional mediations you have conducted since taking CWSL's Advanced Mediation class. Please check all that</i>	<b>Response Percent out of 30</b>	<b>Response Count</b>
Bankruptcy	3%	1
Business	10%	3
Community (Small Claims, Neighborhood)	40%	12
Construction	0%	0
Consumer	3%	1
Criminal	7%	2
Elder	0%	0
Entertainment/Sports	0%	0
Environmental	0%	0
Estate/Trust/Probate	3%	1
Family	47%	14
Fee Disputes	7%	2
Healthcare	0%	0
Intellectual Property	0%	0
International	3%	1
Juvenile	20%	6
Labor/Employment	3%	1
Malpractice	0%	0
Personal Injury	7%	2
Real Estate	0%	0
Tax	0%	0
Workers Compensation	0%	0
Other (please specify): Legislative Policy	3%	1
<b><i>Total Number of Respondents: 30</i></b>		

When asked what type of mediations they did *most often*, the 30 respondents answered as follows:

<i>What type of professional mediation have you conducted most often? Please select ONE from the list below.</i>	<b>Response Percent out of 30</b>	<b>Response Count</b>
Bankruptcy	0	0
Business	3%	1
Community (Small Claims, Neighborhood)	23%	7
Construction	0	0
Consumer	3%	1
Criminal	0	0
Elder	0	0
Entertainment/Sports	0	0
Environmental	0	0
Estate/Trust/Probate	3%	1
Family	40%	12
Fee Disputes	0	0
Healthcare	0	0
Intellectual Property	0	0
International	3%	1
Juvenile	13%	4
Labor/Employment	3%	1
Malpractice	0	0
Personal Injury	0	0
Real Estate	0	0
Tax	0	0
Workers Compensation	0	0
None of the Above	3%	1
Please specify other: Legislative Policy	3%	1
<b><i>Total Number of Respondents: 30</i></b>		

When asked how *often* they mediated, 30 of the mediator- respondents answered as follows:

<i>Since taking CWSL's Advanced Mediation class, in the year when you most actively mediated professionally, how often did you professionally mediate?</i>	<b>Response Percent out of 30</b>	<b>Response Count</b>
Daily	0%	0
Several Times a Week	7%	2
3-5 Times A Month	20%	6
Several Times A Year	60%	18
Skipped question	13%	4
<b>Total Number of Respondents: 30</b>		

I was surprised and frankly, a bit disappointed that only 39 of the 150 respondents (26%) had served as a mediator. Alternate Dispute Resolution is a growing option for many disputants.<sup>59</sup> I was hoping that, with their classroom training and actual experience mediating in Small Claims Court and Juvenile Hall, the clinic graduates would have had a greater opportunity and inclination to mediate.

Commentators have noted, however, that the number of newly-trained mediators exceeds the demand for their skills.<sup>60</sup> There are several reasons for this imbalance: to serve as a paid legal mediator, one must first develop an expertise in an area of the law<sup>61</sup> Moreover, to be trusted and retained as a mediator, one must network<sup>62</sup> and cultivate a reputation in the community for that legal expertise and for one's mediation skills.<sup>63</sup> It follows then that although well-trained, recent law school graduates will have few opportunities to mediate legal disputes immediately upon, or soon after, completing their studies.<sup>64</sup>

Furthermore, the mediation field has become increasingly crowded as more and more experienced lawyers and judges retire from their positions or choose to leave them mid-career to establish a mediation practice.<sup>65</sup> Mediation is "perceived as very emotionally rewarding," and "'as fun' as opposed to the drudgery of much of law practice."<sup>66</sup> This factor also makes the entry into the field of paid legal mediation difficult for young lawyers.

Finally, it is likely that the recent economic conditions in this country had a significant effect on the respondents' ability to mediate for money or to assume additional pro bono responsibilities.

<sup>59</sup> Daicoff, *supra* note 5, at 825.

<sup>60</sup> Urska Velikonja, *Making Peace and Making Money: Economic Analysis of the Market For Mediators in Private Practice*, 72 Alb. L. Rev 257, 290 (2009).

<sup>61</sup> *Id.* at 282; Brown & Schneider, *supra* note 58, at 17.

<sup>62</sup> Brown & Schneider, *supra* note 58, at 18-19.

<sup>63</sup> Velikonja, *supra* note 60, at 282-285.

<sup>64</sup> *Id.* at 262-285.

<sup>65</sup> *Id.* at 263.

<sup>66</sup> *Id.*



In 2007, the United States was hit by the worst economic crisis since the 1929 Depression.<sup>67</sup> This recession resulted in a dramatic rise in unemployment<sup>68</sup> and limited work opportunities. This economic downturn undoubtedly affected the respondents' employment status and, in turn, paid mediation opportunities. Moreover, because there were fewer paying positions, respondents likely had to devote more of their time to seeking and maintaining paying jobs, rather than to pro bono options.

### C. Mediation Techniques:

#### a. Use of Techniques in Professional Mediations:

Listening skills are critical in the practice of law, yet lawyers are often very poor listeners.<sup>69</sup> Scholars remark that legal education is responsible for this shortcoming because these skills are rarely emphasized or well-taught in law school.<sup>70</sup> Often, teaching listening is relegated to a small segment of an Alternative Dispute resolution class or a clinical internship. Frequently, those teaching these courses do not have the expertise or inclination to focus on the teaching of listening techniques.<sup>71</sup>

In the Mediation Clinic, however, we spend a significant amount of time teaching various listening techniques. We accomplish this through discussion, demonstration by the teachers, and practice by the students, both in class and in the community. Some of these techniques include: active listening, using silence effectively, reframing positions to interests, paraphrasing to clarify information, reframing into neutral language, reversing roles, summarizing, employing a common positive, increasing awareness of the parties' culture, using Thomas-Kilmon Conflict Modes,<sup>72</sup> brainstorming solutions and acknowledging the participants.

We asked the respondents *when they served as a professional mediator*<sup>73</sup> whether they used any of the mediations techniques that they learned in the Advanced Mediation class. They could select as many of the techniques as they used.

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<sup>67</sup> Rob Willis, *U.S. Recession Worst Since Great Depression, Revised Data Show*, Bloomberg, Aug. 1, 2009, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aNivTjr852TI>; Heather Stewart, *We Are in the Worst Financial Crisis Since Depression, says IMF*, The Guardian, April 9, 2008, <http://www.theguardian.com/business/2008/apr/10/useconomy.subprimecrisis>; John Hilsenrath, *Worst Crisis Since '30s, With No End Yet in Sight*, The Wall Street Journal, Sept. 18, 2008, <http://online.wsj.com/articles/SB122169431617549947>.

<sup>68</sup> Louise Uchitelle, *Jobless Rate Hits 7.2%, a 16 Year High*, N.Y. Times, Jan. 9, 2009, [http://www.nytimes.com/2009/01/10/business/economy/10jobs.html?\\_r=0](http://www.nytimes.com/2009/01/10/business/economy/10jobs.html?_r=0).

<sup>69</sup> Judge Mark Bennett, *Eight Traits of Great Trial Lawyers*, 33 Rev. Litig. 1, pg. 12 (2014).

<sup>70</sup> Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 Fla. Coastal L. Rev. 145, 145 (2012).

<sup>71</sup> *Id.* at 154-156.

<sup>72</sup> Thomas Kilmon Conflict Modes is a test that determines the test-taker's personality type in conflict. For a description and critique of this test see, Andrea Schneider and Jennifer Brown, *Negotiation Barometry: A Dynamic Measure of Conflict Management Style*, 8 Ohio St. J. on Disp. Resol. 557, 560-565 page cited (2013).

<sup>73</sup> This question was directed at, and answered by, both paid and volunteer mediators.

The 30 mediator-respondents answered as follows:

<i>When you served as a professional mediator, did you ever use any of the following mediation techniques in your mediations that you learned in CWSL's Advanced Mediation class? Please check all that apply.</i>	<b>Response Percent out of 30</b>	<b>Response Count</b>
Active Listening (Listening for underlying emotions)	100%	30
Silence as a Listening Technique	50%	15
Reframing Positions to Interests	83%	25
Paraphrasing to Clarify What Was Said	80%	24
Reframing into Neutral Language	60%	18
Role Reversal	40%	12
Summarizing the Issues	77%	23
Common Positive	47%	14
Cultural Awareness of the Parties	37%	11
Thomas-Kilmon Conflict Modes	40%	12
Brainstorming Solutions	83%	25
Acknowledgment	80%	24
<b><i>Total Number of Respondents: 30</i></b>		

When we asked *how often* they had used each of these techniques in the year when they most actively mediated professionally, the 30 mediator-respondents answered as follows:

<i>In the year when you most actively mediated professionally, how often did you use each of the following mediation techniques that you learned in CWSL's Advanced Mediation class?</i>	All Mediations (100%)	Most Mediations (75%)	About 1/2 of the Mediations (50%)	Never (0%)	Response Count
Active Listening (Listening for underlying emotions)	23	4	0	0	27
Silence as a Listening Technique	7	7	9	1	24
Reframing Positions to Interests	12	10	2	2	26
Paraphrasing to Clarify What Was Said	19	6	1	1	27
Reframing into Neutral Language	4	14	3	2	23
Role Reversal	2	5	8	8	23
Summarizing the Issues	19	5	3	0	27
Common Positive	8	6	4	6	24
Cultural Awareness of the Parties	5	3	8	7	23
Thomas-Kilmon Conflict Modes	3	5	8	5	21
Brainstorming Solutions	19	4	3	1	27
Acknowledgment	17	5	3	1	26
Skipped Question					3
<b><i>Total Number of Respondents: 30</i></b>					

**b. Use of Techniques in Professional Life:**

When we teach these “mediation” techniques, we emphasize that they can be used outside of the mediation process. Any of the listening techniques are effective when interviewing or counseling a client. Summarizing, role reversal, dealing with difficult individuals or awareness of cultural differences can be very effective when communicating with clients, witnesses, other parties, co-workers, or other attorneys.

We asked the respondents if they used any of these techniques in their professional lives, outside of mediating a dispute. All 150 individuals responded to this question. 98% reported that as professionals, they use active listening. 92% responded that they summarized issues, 90% replied that they paraphrased to clarify issues.

Each skill was used in the respondents' professional lives, outside of mediating, by at least 49%. 7 of the 12 skills were used by more than 66% of the 150 respondents. Only 1% reported that, in their professional lives, outside of mediation, they did not use any of these techniques.

<i>In your PROFESSIONAL life (excluding mediating a dispute), which, if any, of the following mediation techniques that you learned in CWSL's Advanced Mediation class have you ever used? Please check all that apply.</i>	Response Percent	Response Count
Active Listening (Listening for underlying emotions)	98%	147
Silence as a Listening Technique	82%	123
Reframing Positions to Interests	68%	102
Paraphrasing to Clarify What Was Said	90%	135
Reframing into Neutral Language	59%	89
Role Reversal	51%	77
Summarizing the Issues	92%	138
Common Positive	59%	89
Cultural Awareness of the Parties	56%	84
Thomas-Kilmon Conflict Modes	49%	73
Brainstorming Solutions	75%	112
Acknowledgment	76%	114
None of the Above	1%	2
<b>Total Number of Respondents: 150</b>		

When asked *how often* they used these techniques in their professional life, outside of mediating a dispute, 150 respondents again answered as follows:

<i>In the past year, how often did you use the following mediation techniques in your PROFESSIONAL life (excluding mediating disputes) that you learned in CWSL's Advanced Mediation class?</i>	Daily	Several Times a Week	Several Times a Month	Several Times a Year	Never	Response Count
Active Listening (Listening for underlying emotions)	78	44	17	6	4	149
Silence as a Listening Technique	41	50	28	15	11	145
Reframing Positions to Interests	28	38	35	20	15	136
Paraphrasing to Clarify What Was Said	61	54	17	7	4	143
Reframing into Neutral Language	26	36	33	26	14	135
Role Reversal	12	24	35	26	34	131
Summarizing the Issues	68	51	18	5	5	147
Common Positive	19	37	31	26	20	133
Cultural Awareness of the Parties	29	22	31	24	28	134
Thomas-Kilmon Conflict Modes	19	32	27	20	31	129
Brainstorming Solutions	46	44	26	14	9	139
Acknowledgment	56	38	25	8	9	136
<b><i>Total Number of Respondents: 150</i></b>						

The disappointment I felt when learning that only 39 of our graduates were mediating disputes was tempered significantly when I reviewed these results. I was pleased to learn that in their professional lives, outside of mediation, each skill we taught them was used by at least 49% of the 150 respondents. 90% of the respondents reported that, in their professional life, they use three of these skills: active listening, summarization of issues and paraphrasing to clarify issues. More than 75% said that in their professional lives, they also relied on three other techniques: silence, acknowledgment, and brainstorming.

### c. Use of Techniques in Personal Life:

We also stress, during the class, that these techniques are valuable communication tools outside the students' professional endeavors. For various reasons we encourage the students to use these skills in their personal lives. First, increased use makes the students more proficient at these skills. This proficiency is beneficial when they seek to use these skills professionally. Second, increased use often results in positive feedback from the students' family and friends, who are surprised and delighted by the new way the students listen and communicate.<sup>74</sup> This positive reaction makes the students more likely to employ these skills in their professional lives. Finally, increased use and positive feedback make the students feel better about themselves, their proficiency with these skills, and their role as problem-solvers.<sup>75</sup> Ultimately, their comfort with and proficiency in these skills may lead them to become more confident and satisfied lawyers.<sup>76</sup>

Consequently, we also asked which, if any, of these mediation techniques they learned in the class they ever have used in their personal lives. All 150 respondents answered this question, too. They reported that in their personal lives, at least 75% of the respondents used six of these skills: 97% used active listening, 85% used silence and acknowledgement; 81% used summarizing the issues, 79% used paraphrasing, and 75% used brainstorming. The smallest percentage—51%—reported using the Thomas Conflict Modes. Only 4% replied that they did not use any of the skills in their personal lives.

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<sup>74</sup> These new skills allow the students to demonstrate their “interpersonal intelligence,” which “allows individuals ‘to discern and respond appropriately to the moods, temperaments, motivations and desires of others’” (citations omitted) Daicoff, *supra* note 5, at 841.

<sup>75</sup> “Thus, to be optimally effective and avoid psychological distress, some scholars and researchers called for attorneys to (1) identify and follow their own intrinsic values; and (2) develop their interpersonal skills and competencies. (citations omitted) Daicoff, *supra* note 5, at 809, 837.

<sup>76</sup> Commentators note that those who are most satisfied practicing law are those who have realistic expectations about the practice of law and those who are aware of their own skills and strengths. This allows them to focus on areas of law that reflect their expectations and employ their competencies. See for example, Jerome Organ, *What Do We Need to Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. St. Thomas L.J. 225, 274 (2011).

<i>Thinking about your PERSONAL life, which of the following, if any, mediation techniques that you learned in CWSL's Advanced Mediation class have you ever used? Please check all that apply.</i>	<b>Response Percent</b>	<b>Response Count</b>
Active Listening (Listening for underlying emotions)	97%	145
Silence as a Listening Technique	85%	127
Reframing Positions to Interests	71%	106
Paraphrasing to Clarify What Was Said	79%	119
Reframing into Neutral Language	67%	101
Role Reversal	69%	103
Summarizing the Issues	81%	122
Common Positive	68%	102
Cultural Awareness of the Parties	57%	86
Thomas-Kilmon Conflict Modes	51%	76
Brainstorming Solutions	75%	113
Acknowledgment	85%	128
None of the Above	4%	6
<b><i>Total Number of Respondents: 150</i></b>		

When asked how *often* they used these techniques in their personal life, respondents reported that they used some of the skills several times a week or even daily.

<i>In the past year, how often did you use the following mediation techniques in your PERSONAL life?</i>	Daily	Several Times a Week	Several Times a Month	Several Times A Year	Never	Response Count
Active Listening (Listening for underlying emotions)	84	39	17	6	3	149
Silence as a Listening Technique	47	45	32	11	7	142
Reframing Positions to Interests	12	46	42	18	13	131
Paraphrasing to Clarify What Was Said	40	58	24	10	3	135
Reframing into Neutral Language	16	42	39	23	11	131
Role Reversal	11	28	47	30	13	129
Summarizing the Issues	31	50	36	12	8	137
Common Positive	17	41	35	21	14	128
Cultural Awareness of the Parties	20	24	28	33	22	127
Thomas-Kilmon Conflict Modes	18	27	30	19	28	122
Brainstorming Solutions	32	42	36	16	7	133
Acknowledgment	47	48	28	10	1	134
<b><i>Total Number of Respondents: 150</i></b>						

These results reaffirmed what I had already suspected—that not only were we teaching the students about the process of mediation, but we were also teaching them specific communication skills which would affect the way in which they interacted with individuals in their professional and personal lives. Moreover, I know that for a law student to become an effective attorney, these skills are as critical to learn and as difficult to master as issue-spotting or legal research. Finally, research indicates that prospective employers value these skills and are looking for individuals who are adept at them.<sup>77</sup>

This made me realize that, in many ways, the course was more about its parts than its sum. The respondents clarified for me that it was far more likely that they would be using the discrete skills we taught them, rather than synthesizing them to conduct mediations. Consequently, this made me re-examine the structure and content of the course to focus more on teaching the specific techniques that students use in mediating, practicing law, and interacting in their

<sup>77</sup> See notes 38 through 45 and accompanying text.



personal lives, and less on the entire process of mediation. I had to make sure to explain the underlying purpose and goal of each skill and to explain the methodology of that skill. I also had to demonstrate the techniques to them, repeatedly if necessary. Most importantly, I had to provide the students plenty of time to practice the skills on each other and to provide them critiques, before they worked at the placements and tried it on actual people. I now understand that once they mediate disputes in the field, it is critical to provide them with significant constructive critique on the specific methods they are using during the process of mediation. Finally I had to stress to the students that even if they did not mediate in the future, these skills all have independent value and can be used effectively in their professional and personal lives.

#### D. Motivation for Taking the Class:

We asked the following open-ended question: *What motivated you to take the Advanced Mediation class?*

Each of the 150 respondents answered this open-ended question. The responses broke down into various categories that I grouped as follows:

- *Appreciated learning about alternatives to traditional forms of dispute resolution and wanted to learn how to resolve conflicts creatively and peacefully: **58 respondents (39%);***
- *Wanted to get practical training and were eager to apply what they learned outside of the classroom: **40 respondents (27%);***
- *Wanted to become a mediator in the future: **17 respondents (11%);***
- *Wanted to become better communicators: **13 respondents (9%);***
- *Wanted to help people: **5 respondents (3%);***
- *Other responses such as, curiosity, recommendation from classmates, liked the professors and class sounded interesting: **17 respondents (11%).***

<b><i>What Motivated You to Take Advanced Mediation?</i></b>	<b>Response Percent</b>	<b>Response Count</b>
Appreciated learning alternatives to traditional forms of dispute resolution and wanted to learn how to resolve conflicts creatively and peacefully	39%	58
Wanted to get practical training and was eager to apply this training outside the classroom	27%	40
Wanted to become a mediator in the future	11%	17
Wanted to become better communicators	9%	13
Sought to help people	3%	5
Other responses--e.g., "I was curious"; "recommended by classmates"; "liked the professors and class sounded interesting."	11%	17
<b><i>Total Number of Respondents: 150</i></b>		

Below is a sample of the responses to this question:

**a. Alternative Dispute Resolution:**

1. *I'm naturally more inclined to resolving conflicts as amicably as possible. Litigation can be very hostile and aggressive and I wanted to learn ways to avoid it when mediation was a viable option;*
2. *To learn the techniques to solve problems cooperatively not always as adversaries;*
3. *The idea that a resolution can be reached which satisfies all parties' needs;*
4. *I was interested in non-adversarial ways to solve problems;*
5. *I liked (and still do) the concept of mediating disputes - where you arrive at your own negotiated solution, rather than having a 3rd party decide for you. It works and this class was instrumental in who I am, both professionally and personally. It was and should be a required class. The new skills I learned and old skills I possessed that it reinforced are crucial to my success.*

**b. Practical Experience outside the Classroom:**

1. *I was interested in a class that involved more interactive participation, and I especially liked the fact that the Advanced Mediation class gave me an opportunity to do real-world mediating in both Small Claims Court and the Juvenile Justice Center. I wanted real-world experience and*

*that class gave it to me.*

- 2. I wanted the chance to work outside of the classroom in a courtroom/non-hostile environment. I loved that I received real-world experience in this class.*
- 3. I wanted to get practical experience while in law school. This experience has proven very useful in my practice since we settle a vast majority of our cases.*
- 4. I wanted a class where I actually applied the skills I was learning to real-world situations. I truly wish more of the classes I took in law school did this. I also believe that conflict resolution is the way of the future.*
- 5. In addition to enjoying my general mediation class and thinking that advanced mediation would provide additional valuable skills for life and work, the fact that we had hands-on opportunity to utilize mediation techniques was my deciding factor. There are limited opportunities for a young professional to mediate and this class gave me an opportunity to put what I learned to the test. Fantastic for any student to put into practice what they learn.*

**c. Interest in Becoming a Mediator in the Future:**

- 1. Entering law school I wanted to become a mediator and I took the class because it was directly in line with what I wanted to do when I graduated.*
- 2. I enjoyed my Mediation class and was interested in hoping to mediate professionally.*
- 3. My desire to become a professional mediator in the future.*
- 4. Always been interested in mediation. May consider one day becoming a full-time mediator.*
- 5. My interest in becoming a certified mediator.*

**d. Improve Communication Skills:**

- 1. Master communications skills to improve both professional and personal relationships.*
- 2. To learn how best to communicate in high conflict situations.*
- 3. Learning how to better communicate to advance my client's position.*
- 4. I wanted to improve my communication skills, learn how to effectively engage with individuals and develop rapport and learn how to resolve conflict without litigation.*
- 5. Fellow students shared that it was a very useful course for both personal and professional communication.*

**e. Help People:**

1. Liked the idea of helping in the community while learning hands on skills.
2. Sounded interesting and I love to volunteer.
3. I like to help people solve problems.

These responses serve to clarify that, although some students took the class in order to become a mediator, most of them saw it as an opportunity to gain practical training and hands-on experience in valuable communication skills. Although students appreciated the opportunities to learn and to practice the entire process of mediation, they knew that it was much more likely that they would use the conflict resolution techniques they learned to settle disputes informally and to communicate with individuals in their professional and personal life. Again, the respondents were teaching me that the Mediation Clinic was more about its parts, than its sum.

**E. Interest in Becoming a Mediator:**

When asked about their interest level in becoming a mediator *before* taking this clinic, 34 were very interested, 77 were somewhat interested, and 39 were not at all interested.

<i>To the best of your recollection, before you took the Advanced Mediation class, how interested were you in becoming a mediator?</i>	<b>Response Percent</b>	<b>Response Count</b>
Very interested	23%	34
Somewhat interested	51%	77
Not at all interested	26%	39
<b>Total Number of Respondents: 150</b>		

When asked about their interest in becoming a mediator *after* taking this clinic, 116 reported they were more interested, 2 reported they were less interested, and 32 had the same interest.

<i>Did taking the Advanced Mediation class make you more interested, less interested, or did not affect your interest, in becoming a mediator?</i>	<b>Response Percent</b>	<b>Response Count</b>
More interested	77%	116
Less interested	1%	2
Did not affect interest	21%	32
<b>Total Number of Respondents: 150</b>		

We followed up with this open-ended question: *What are some of the reasons you became more, or less, interested in becoming a mediator?* 128 respondents answered this question.

The largest percentage, 73% (94 of the 128), who answered this open-ended question said they were *more interested in becoming a mediator after this class* because they enjoyed the process and appreciated its results.

Below is a sample of their responses:

### **Enjoyed Mediation Process and Appreciated Results:**

1. *I didn't anticipate how good it would feel when two people come out of a dispute equally satisfied with the outcome. Court decisions are a zero sum game, but mediation is not.*
2. *It's rewarding to teach people to fish (so to speak). Especially in juvenile hall, those young ladies can really change their lives if they change their approach to conflict.*
3. *After taking the mediation class, I became more interested because of the hands-on experience I received that allowed me to practice the mediation skills, obtain feedback to help me improve those skills, and see the outcomes of my efforts in the clients that I worked with.*
4. *I liked the idea of parties getting to have their say, to feel as if they were being heard, and then to come to a resolution that everyone could live with, as opposed to a resolution that was forced upon the parties.*
5. *I liked the flexibility of mediation and being able to tailor the final agreement to the individuals' needs.*
6. *It works! I was really blown away and am continuously surprised by how these techniques worked. No matter how big or small the issue, the individual or combination of tools we learned actually helped discover and get to the REAL issue. It still fascinates me how active listening, reframing, and common positives--all so easy to do!--work on so many people.*

The remaining 34 respondents' answers included such responses as:

- *I was more drawn to litigation.*
- *Too busy with work life to fit in extra work as a mediator.*
- *It didn't necessarily fit my personality; and I knew I wanted to be a defense attorney. Mediation was my second choice.*

### **F. Effect on Choice of Employment or Ability to Get Job:**

#### **a. Effect Learning Mediation Techniques Had On Employment:**

##### **1. Effect on Choice of Employment:**

We asked the respondents *whether learning these mediation techniques affected their choice of employment after graduation*. All 150 responded to the question. 32 responded that it did (21%). 118 responded that it did not (79%).

<i>Did learning these mediation techniques in CWSL's Advanced Mediation class affect your choice of employment after earning your degree from CWSL?</i>	<b>Response Percent</b>	<b>Response Count</b>
Yes	21%	32
No	79%	118
<b>Total Number of Respondents: 150</b>		
<i>*92 Respondents offered comments</i>		

## 2. Effect on Ability to get a Job:

When asked whether *learning these mediation techniques affected their ability to get a job after graduation*, again all 150 responded to this question. 56 responded that it did (37%) while 94 responded that it did not (63%).

<i>Did learning these mediation techniques in CWSL's Advanced Mediation class affect your ability to get a job after earning your degree from CWSL?</i>	<b>Response Percent</b>	<b>Response Count</b>
Yes	37%	56
No	63%	94
<b>Total Number of Respondents: 150</b>		
<i>*99 Respondents offered comments</i>		

92 of the 150 respondents offered comments for the first question, but their explanations for the answers to *both* these questions were similar--generally their employment decisions were driven by expediency. 33 out of 92 (36%) reported that they took jobs that they were offered in order to pay loans, to earn money, and to gain legal experience. 17 out of 92 (18%) stated that they already had a job before they took the class, or they were interested in another area of law. 9 out of 92 (10%) said it was difficult to make a living as a mediator immediately out of law school.

13 out of 92 respondents (14%) commented, however, that learning the mediation techniques affected their choice of employment because, after participating in the clinic, they were interested in helping people and in pursuing a less adversarial and more peaceful way to practice law. Moreover, despite challenging economic conditions and limited mediation experience, 37% of the respondents reported that learning these mediation techniques in the Mediation Clinic *did affect their ability to get a job* after they graduated from law school.

<i>Did learning these mediation techniques in CWSL's Advanced Mediation class affect your choice of employment/ your ability to get a job after earning your degree from CWSL?</i>	<b>Response Percent out of 92</b>	<b>Response Count</b>
No. Took job offered: to pay loans, earn money and gain experience	36%	33
No. Already had a job; Interested in another area of law.	18%	17
No. Difficult to earn living as mediator immediately out of law school.	10%	9
Yes. Interested in helping people and pursuing less adversarial, more peaceful way to practice law.	14%	13
Offered other comments	22%	20
<b><i>Total Number of Respondents: 92</i></b>		

Below is a sample of the responses to these two questions:

**i. Little Job Choice:**

1. *Paying my school loans was the driving force behind accepting my first job.*
2. *As a recent graduate leaving school in the worst economic recession since the Great Depression, I looked for any job I could find, took whatever job was offered to me, and accepted any salary proposed. I would have been more picky in my job selection had I thought that there was more opportunity out there.*
3. *I took a job I was offered. I didn't have a lot of choices. If I'd had my choice, it would have affected my job, but I just didn't have many options.*
4. *Due to the economy and bleak job prospects facing recent law graduates, I applied to a variety of positions upon graduation. I did not feel that I could be too selective given the limited number of jobs available.*

**ii. Already Had Job Before Taking Class/ Interested in Another Area of Law:**

1. *I decided my career path long before taking the mediation class.*
2. *I knew well before taking advanced mediation that I was looking to practice at a mid-sized firm where I could get client contact and in-court experience early.*
3. *I always wanted to be a District Attorney.*

### **iii. Difficult to Mediate Immediately out of Law School:**

- 1. Difficult to become solely a mediator as a profession directly out of law school. Am still interested in pursuing it in the future;*
- 2. I always assumed (and still believe) that you cannot realistically begin a career as a mediator without any experience in the legal field. I still envision serving as a mediator (or perhaps arbitrator) at some point.*
- 3. While I would love to advance my career towards becoming a professional mediator, the opportunities are not readily available for a neophyte in any industry. It is important to have an excellent base in any profession before specializing in one particular aspect. As such, upon exiting law school and applying for jobs, I knew I would need to find an opportunity to become a successful attorney before I could become a successful mediator. The trick will be how to parlay the skills I am gaining as an attorney into a career as a mediator down the road.*

### **iv. Less Adversarial Way to Practice Law:**

- 1. My participation in CWSL's Advanced Mediation course certainly persuaded me to seek positions that offered the potential for mediation or another form of creative problem-solving and conflict resolution.*
- 2. I knew that I didn't want to become a litigator. I melted right in with the ideas of mediation and its process. I felt there was a better way, and there is.*
- 3. All of my post-graduate experience has been in the role of a third-party neutral. I am comfortable in that role and believe that my work makes a difference in the lives of others.*
- 4. Yes, in the sense that my experience with mediation made me more aware of how I could utilize the mediation skills in my current practice of law in representing children and families in an emotionally charged legal environment.*

### **b. Effect Mediating Live Disputes Had on Employment:**

#### **1. Effect on Choice of Employment:**

When asked *whether mediating live disputes in the community affected their choice of employment after graduation*, 150 responded. 36 reported that it did (24%) while 114 reported that it did not (76%). 83 offered explanations for their responses.



<i>Did mediating live disputes in the community for CWSL's Advanced Mediation class affect your choice of employment after earning your degree from CWSL?</i>	<b>Response Percent</b>	<b>Response Count</b>
Yes	24%	36
No	76%	114
<b>Total Number of Respondents: 150</b>		
<i>*83 Respondents offered comments</i>		

## 2. Effect on Ability to get a Job:

When asked whether *mediating live disputes affected their ability to get a job after law school graduation*, 51 individuals reported that it did (34%) while 99 reported that it did not (66%).

<i>Did mediating live disputes in the community for CWSL's Advanced Mediation class affect your ability to get a job after earning your degree from CWSL?</i>	<b>Response Percent</b>	<b>Response Count</b>
Yes	34%	51
No	66%	99
<b>Total Number of Respondents: 150</b>		
<i>*85 Respondents offered comments</i>		

85 of the 150 (57%) respondents explained their close-ended answer to this question. They reported that learning the mediation techniques and mediating live disputes had several indirect and, frankly, unintended consequences on their ability to get a job after law school.

- 33 (39%) stated that their practical experience in resolving disputes was an asset because it caused them to stand out in a sea of job applicants and provided them an opportunity to demonstrate tangible value to their prospective employers.
- 4 (5%) reported that the clinic taught them to communicate better which benefitted them when seeking employment.
- 3 (4%) mentioned that resolving actual conflicts with people under stressful circumstances was a great confidence builder, which helped them interview better.

- 22 (26%) responded that it did not help with securing employment.
- The remaining 23 (27%) responded with other responses such as: I was already employed or it neither helped nor hurt.

<i><b>Did mediating live disputes in the community affect your ability to get a job after graduation?</b></i>	<b>Response Percent out of 85</b>	<b>Response Count</b>
Having practical experience resolving actual disputes allowed them to stand out in a sea of job applicants and demonstrate their tangible value to prospective employers.	39%	33
The Clinic taught valuable communication skills which benefitted them when seeking employment.	5%	4
Resolving actual conflicts in a stressful environment led to confidence in the job interview process.	3%	3
The Clinic did not help them secure employment.	26%	22
Other responses—e.g., “I was already employed”; “it neither helped nor hurt.”	27%	23
<b><i>Total Number of Respondents: 85</i></b>		

Below is a sample of the students’ responses:

**i. Practical Experience:**

1. *Yes, I believe people were impressed with my small claims mediation experience.*
2. *A lot of employers were intrigued by the fact that I had mediated in small claims and juvenile hall. They thought that set me apart from other applicants.*
3. *During my job interview, my interviewer was very interested in learning about my mediation experience, and I believe that made a difference in their decision to hire me.*

**ii. Communication Skills:**

1. *The experience made me a better communicator and negotiator. It also helped build rapport.*
2. *Helped in interviewing process.*

3. *I think it assisted in creating topics to discuss in job interviews.*

**iii. Confidence:**

1. *I believe that it gave me the confidence I needed to feel comfortable in my role as a professional and I believe that it helped me in interviewing.*

2. *Handling live disputes is key to building the confidence required to deal with real people and real problems.*

3. *Again, it was a nice résumé booster and gave me confidence when entering the job market.*

**iv. No it did not help:**

1. *Not for me personally, because the jobs that I did get, I got because of my networking, personality and connections that I had made. However, I have always liked the skills that I learned and mentioning that I was involved in the Mediation class and that I mediated small claims and juvenile inmate disputes.*

2. *I don't think it mattered to potential employers that I had mediation training.*

3. *The job market was poor and my current employment was the only job opportunity available.*

4. *I tried to talk up the invaluable real-world experience that came with mediating disputes with intractable parties (especially at the Juvenile Justice Center), but none of the potential employers that I interviewed with seemed to take it all that seriously. Once I even turned down a job (the only time I ever did so) because of the employer's condescending reaction to my experience. So, I'm disappointed that my experience in the class wasn't the boon I thought that it might be for my resume, but I don't hold that against Advanced Mediation, I hold it against the short-sighted employers I interviewed with who couldn't appreciate how I was made a better lawyer because of my Advanced Mediation experience.*

I had certainly hoped that resolving disputes between actual people would provide students experience in practical skills and in professionalism that would enhance their employment opportunities. Frankly, I had never really thought about, or planned for the class boosting their confidence so significantly that it would assist them in their pursuit of employment.<sup>78</sup> I knew that by listening differently and by identifying underlying interests, students would enhance their communication skills. Nonetheless, I did not think that this would have a direct impact on the way they felt about themselves and the way they presented themselves to others. This was yet another unintended and unforeseen collateral benefit of the clinic.

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<sup>78</sup> I understand that the respondents' sense of confidence in interviewing for jobs implicates the theory of self-efficacy—an individual's belief that her effectiveness in performing specific tasks influences the individual's belief about her ability to perform other tasks. See for example, Michael Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 Mich. St. DCL L. Rev. 447, 477 (2003).

**G. Additional Comments:**

We asked the following final, open-ended question: *Is there anything else you would like to tell us about mediation and/or CWSL's Advanced Mediation class?*

I was somewhat surprised, and candidly delighted, by the responses to this question. 117 out of 150 (78%) provided comments to this open-ended question as follows:

- 32 (27%) said that the Advanced Mediation was a great class.
- 29 (25%) responded that they valued the class because of the practical skills they learned and are still using.
- 27 (23%) reported that it was among their favorite classes at CWSL.
- 11 (9%) urged us to continue teaching the class and said that they recommended the class highly to anyone considering it.
- 18 (15%) provided other responses such as: invite more experienced mediators to the class, make the class mandatory, provide specialized mediation sessions for certain areas of law.

<i>Is there anything else you would like to tell us about mediation and/or CWSL's Advanced Mediation class?</i>	<b>Response Percent out of 117</b>	<b>Response Count</b>
Advanced Mediation was a great class	27%	32
Valued the class because of the practical skills they learned and are still using	25%	29
Among their favorite classes at CWSL	23%	27
Continue teaching the class; highly recommend the class to classmates	9%	11
Other responses --e.g., "invite other experienced mediators to the class"; "make the class mandatory"; "have specialized mediation sessions for certain areas of law."	15%	18
<b>Total Number of Respondents: 117</b>		

Below is a sample of the students' responses:

**i. Great Class:**

*1. My experience was phenomenal. My professors were patient, effective and inspiring. I am grateful for the opportunity I had to work with and learn from such amazing professionals. I will carry the memories of conducting the live meditations at the juvenile facility forever. Thank you*

*for all that you do.*

*2. I think it is extremely beneficial. The best hands on experience in law school where you really get something out of it. Law school does not have enough practical classes that prepare you to be a lawyer; everything is staged and drawn up in a lesson plan. In this class, you actually speak with real people with real problems, and it is unpredictable, so there is no expectation of how you are supposed to come to a solution, you have to do it on your own. I liked that.*

*3. It was an amazing class that is invaluable to a student who wants to truly understand the practical application of mediation. This class should always exist at CWSL. It is unique and in my talking to students and graduates from other schools, they were envious of this program, wishing that something similar was at their school when they were there. Thanks so much for an outstanding educational and life experience.*

## **ii. Practical Skills:**

*1. In my opinion, the Advanced Mediation class was the best class I took in law school, hands down. First, Professors Morton and Martin were phenomenal instructors. It was clear that they actually believed in the techniques they were teaching and had a great method of instructing and training in how to best utilize those techniques. The format of the class is fantastic (even though a student may whine initially about having an 8 hour training on a Saturday, how much fun it was to hang out at Professor Morton's home, eat great food, and do our trainings and practice - it was more like a party where we learned a lot and not just a class). Also, the feedback sessions in the class were so helpful to hear how other students handled difficult situations with students. Also, for students like me, who aren't excited about "the fight" that is involved in legal representation, this class gives actual tools (and the opportunity to use them) to use our degree and licensing to take a different approach. Additionally, these skills move beyond the formal mediation and are valuable when doing other settlement conferences and negotiations. And, these skills also are great life tools that make us better attorneys as we are better listeners and can put our own perspectives aside in order to truly hear what our client is saying. There has been no other class in law school that has been as beneficial to me professionally and personally as this class has been!*

*2. Looking back and knowing what I know now, I believe this was one of the most valuable courses I took in law school. My practice requires a lot of legal writing, etc. But, I believe (and have been told) what really sets me apart is my communication style and ability to connect with people. I attribute these skills to the advanced mediation program and am so grateful that I participated in the program. Thanks!!*

*3. The Advanced Mediation class at CWSL not only exceeded my expectations in a course offering at Cal Western, the lessons learned also stuck with me well beyond the semester. I still use the tools and lessons learned on a daily and weekly basis! I use them professionally and personally and I only hope that I can get back to Mediation sometime in the future. Professor Einesman, the coursework, and the real-life mediations we conducted were all so memorable and I whole-heartedly value that experience--what a treat!*

### iii. **Highly Recommended:**

*1. This class was one of the best classes I took at Cal Western. I was able to get hands-on experience with real people and mediate real disputes. I highly recommend this class;*

*2. Please, keep it going. Like I said earlier it was amongst only a few practical experience classes offered by CWSL and definitely one of the most rewarding and instructive I took while at CWSL. I believe practical experience is underutilized in the law school setting in general, and should be given a much more prominent role in a law student's education.*

*3. It was an amazing class that is invaluable to a student who wants to truly understand the practical application of mediation. This class should always exist at CWSL. It is unique and in talking to students and graduates from other schools, they were envious of this program, wishing that something similar was at their school when they were there. Thanks so much for an outstanding educational and life experience.*

### iv. **Favorite Class:**

*1. It was one of my favorite classes. I have said it again and again, but the mediation techniques really work! They have proven to be invaluable in my personal and professional life.*

*2. Mediation class was my favorite class since it is one of the only classes that is hands on. Law School teaches the law not the application. Mediation class has helped make me a well-rounded attorney dealing with clients and resolutions*

*3. This was easily my favorite course during law school and I credit the field hours at juvenile hall and small claims - hands on experience makes such a difference.*

There is nothing more satisfying to educators than to be told that the class they taught was the student's favorite or most useful. Every teacher likes to be appreciated and to feel that the work they have done is valuable. I am, therefore, thrilled with these comments. But, beyond the normal satisfaction, I am impressed with and surprised by, the depth of the students' reaction to the course and the appreciation they have for it now that they are practicing law. Despite tough economic times, significant student debt, a shrinking legal market, the students remain remarkably positive about, and heartfelt in, their approval of the clinic. In fact, I believe that their perspective of the course has only improved with the passage of time. As many of the respondents noted, they enjoyed the class when they took it, but they only truly understood the value of the experience once they were out in the community, practicing law and putting these skills to use.

### **Conclusion**

Although I was motivated initially to undertake this study by my inherent curiosity about what had become of my advanced mediation students, I ended my analysis with several important revelations about the clinic. I know that these findings will transform the way I teach the clinic in the future. Perhaps they will also influence other mediation professors to consider ways in which

they can modify their classes.

First and perhaps foremost I learned that most students were motivated to take the class to learn discrete communication skills rather than the entire process of mediation. Although they enjoyed the process, a majority of our graduates realize, even initially, that it was more likely that in the future they would use the individual skills rather than mediate disputes professionally. Once I understood this fact, I realized that it was equally important to spend significant time on teaching the individual conflict resolution skills as we did on teaching the entire process of mediation.

Additionally, I learned that participating in the clinic led to various results: not only do students learn the process of mediation, but they also learn communication skills that they use frequently in their professional and personal lives. Over 75% responded that they use active listening, paraphrasing, and summarizing in both their professional and personal lives. Less than 5% said that they did not use these skills at all. Moreover, by learning and honing these skills, they gained valuable practical experience and self-confidence, which set them apart from their law school colleagues.

Consequently, I have redesigned the class so as to devote significant time and attention to these individual skills. Moreover, based on this research, I will deliver this message to my future clinic students-- that although they may not become full-time mediators, graduates of this clinic have confirmed that they consistently use these skills in their professional and personal lives.

Moreover, they also learn interpersonal skills, such as collaboration, flexibility, professionalism and problem-solving, which are highly valued by prospective employers. Additionally, they gain important intrapersonal skills such as self-awareness and self-evaluation, two more skills valued by employers.

Finally, although it took some time and effort to learn and accept this, I realized that we were succeeding in our initial goal of training "a new breed of lawyers."<sup>79</sup> When we established this clinic in 1996, we hoped that we would create and teach a class that would promote alternative dispute resolution and "emotional intelligence"<sup>80</sup> among this new generation of lawyers.<sup>81</sup> Now, approximately 18 years later, we have learned that almost 40% of the respondents were motivated to take this class because they wanted to learn alternatives to traditional forms of dispute resolution. Unlike lawyers in the past, these students sought to resolve conflicts creatively and peacefully. They appreciated that this class taught them these valuable skills. Through their responses to this survey, the clinic graduates have informed us that they are accomplishing both our goals and their goals. We are most grateful for this finding.

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<sup>79</sup> Einesman & Morton, *supra* note 2, at p. 53.

<sup>80</sup> "Emotional Intelligence," is defined as, "the subset of social intelligence that involves the ability to monitor one's own and others' feelings and emotions, to discriminate among them and to use this information to guide one's thinking and actions" Peter Salovey & John D. Mayer, *Emotional Intelligence*, 9(3) *Imagination, Cognition, and Personality* 185, 189 (1989-90).

<sup>81</sup> Einesman & Morton, *supra* note 2, at 53-54.

## Advanced Mediation Survey

1. Which category below includes your age?

21-29

30-39

40-49

50-59

60 or older

2. What is your gender?

Female

Male

3. In what year did you receive your degree from California Western School of Law (CWSL)?

4. Have you practiced law in the past fifteen (15) years?

Yes, I currently practice law

Yes, I have practiced law in the past 15 years, but I do not practice law currently

No, I have not practiced law in the past 15 years



## Advanced Mediation Survey

5. If you answered yes to Question 4, please indicate what type(s) of law you currently practice or practiced during the past fifteen (15) years. Please check all types of law that apply.

- Appellate
- Aviation
- Bankruptcy
- Business
- Civil Litigation
- Commercial
- Construction
- Corporate
- Criminal
- Elder
- Eminent Domain
- Entertainment/Sports
- Environmental
- Estate/Trust/Probate
- Family
- Healthcare
- Immigration
- Insurance/Bad Faith
- Intellectual Property
- International
- Juvenile
- Labor/Employment
- Malpractice
- Personal Injury
- Real Estate
- Social Security
- Tax
- Worker's Compensation
- None of the Above

# Advanced Mediation Survey

Other (please specify)

6. Do you currently have a paying job?

Yes

No

7. If you answered yes to Question 6, what type of work are you doing now?

8. Are you retired from a paying job?

Yes

No

9. In what year did you take the Advanced Mediation class at CWSL?

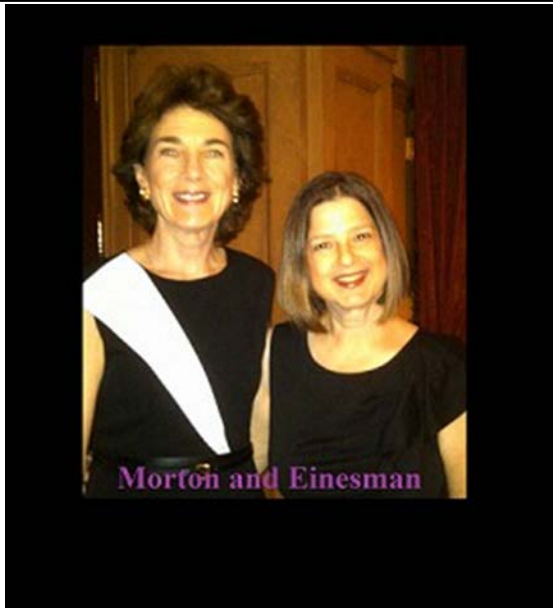
10. Which professor taught you Advanced Mediation at CWSL?

Morton

Einesman

Both: Morton and Einesman

## Advanced Mediation Survey



11. Since taking CWSL's Advanced Mediation class, have you served as a volunteer (no money) mediator?

- Yes, Full Time
- Yes, Part Time
- Yes, Occasionally (a few times a year)
- No, Never

12. Are you currently working as a volunteer (no money) mediator?

- Yes, Full Time
- Yes, Part Time
- Yes, Occasionally (a few times a year)
- No

13. Since taking CWSL's Advanced Mediation class, have you served as a professional (for money) mediator?

- Yes, Full Time
- Yes, Part Time
- Yes, Occasionally (a few times a year)
- No

## Advanced Mediation Survey

14. Are you currently working as a professional (for money) mediator? If you answered no to Questions 11 through 14, please skip to Question 20.

- Yes, Full Time
- Yes, Part Time
- Yes, Occasionally (a few times a year)
- No

15. Please check from the list below, all types of professional mediations you have conducted since taking CWSL's Advanced Mediation class. Please check all that apply.

- Bankruptcy
- Business
- Community (Small Claims, Neighborhood)
- Construction
- Consumer
- Criminal
- Elder
- Entertainment/Sports
- Environmental
- Estate/Trust/Probate
- Family
- Fee Disputes
- Healthcare
- Intellectual Property
- International
- Juvenile
- Labor/Employment
- Malpractice
- Personal Injury
- Real Estate
- Tax
- Workers Compensation
- None of the Above

# Advanced Mediation Survey

Other (please specify)



16. What type of professional mediation have you conducted most often? Please select ONE from the list below.

- Bankruptcy
- Business
- Community (Small Claims, Neighborhood)
- Construction
- Consumer
- Criminal
- Elder
- Entertainment/Sports
- Environmental
- Estate/Trust/Probate
- Family
- Fee Disputes
- Healthcare
- Intellectual Property
- International
- Juvenile
- Labor/Employment
- Malpractice
- Personal Injury
- Real Estate
- Tax
- Workers Compensation
- None of the Above

# Advanced Mediation Survey

Please specify other

17. Since taking CWSL's Advanced Mediation class, in the year when you most actively mediated professionally, how often did you professionally mediate?

- Daily
- Several Times a Week
- 3-5 Times A Month
- Several Times A Year

18. When you served as a professional mediator, did you ever use any of the following mediation techniques in your mediations that you learned in CWSL's Advanced Mediation class? Please check all that apply.

- Active Listening (Listening for underlying emotions)
- Silence as a Listening Technique
- Reframing Positions to Interests
- Paraphrasing to Clarify What Was Said
- Reframing into Neutral Language
- Role Reversal
- Summarizing the Issues
- Common Positive
- Cultural Awareness of the Parties
- Personalities in Conflict (Competitive, Compromiser, Collaborator, Avoider, Accommodator)
- Brainstorming Solutions
- Acknowledgment
- None of the Above

# Advanced Mediation Survey

19. In the year when you most actively mediated professionally, how often did you use each of the following mediation techniques that you learned in CWSL's Advanced Mediation class?

	All mediations(100%)	Most Mediations(75%)	About 1/2 of the mediations (50%)	Never (0%)
Active Listening (Listening for underlying emotions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Silence as a Listening Technique	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reframing Positions to Interests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paraphrasing to Clarify What Was Said	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reframing into Neutral Language	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Role Reversal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Summarizing the Issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Positive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cultural Awareness of the Parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Personalities in Conflict (Competitive, Compromiser, Collaborator, Avoider, Accommodator)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brainstorming Solutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Acknowledgment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Advanced Mediation Survey

20. In your PROFESSIONAL life (excluding mediating a dispute), which, if any, of the following mediation techniques that you learned in CWSL's Advanced Mediation class have you ever used? Please check all that apply.

- Active Listening (Listening for underlying emotions)
- Silence as a Listening Technique
- Reframing Positions to Interests
- Paraphrasing to Clarify What Was Said
- Reframing into Neutral Language
- Role Reversal
- Summarizing the Issues
- Common Positive
- Cultural Awareness of the Parties
- Personalities in Conflict (Competitive, Compromiser, Collaborator, Avoider, Accommodator)
- Brainstorming Solutions
- Acknowledgment
- None of the Above



# Advanced Mediation Survey

21. In the past year, how often did you use the following mediation techniques in your PROFESSIONAL life (excluding mediating disputes) that you learned in CWSL's Advanced Mediation class?

	Daily	Several Times a Week	Several Times a Month	Several Times a Year	Never
Active Listening (Listening for underlying emotions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Silence as a Listening Technique	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reframing Positions to Interests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Paraphrasing to Clarify What Was Said	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reframing into Neutral Language	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Role Reversal	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Summarizing the Issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Common Positive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cultural Awareness of the Parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personalities in Conflict (Competitive, Compromiser, Collaborator, Avoider, Accommodator)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Brainstorming Solutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Acknowledgment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Advanced Mediation Survey

22. Thinking about your PERSONAL life, which of the following, if any, mediation techniques that you learned in CWSL's Advanced Mediation class have you ever used? Please check all that apply.

- Active Listening (Listening for underlying emotions)
- Silence as a Listening Technique
- Reframing Positions to Interests
- Paraphrasing to Clarify What Was Said
- Reframing into Neutral Language
- Role Reversal
- Summarizing the Issues
- Common Positive
- Cultural Awareness of the Parties
- Personalities in Conflict (Competitive, Compromiser, Collaborator, Avoider, Accommodator)
- Brainstorming Solutions
- Acknowledgment
- None of the Above

# Advanced Mediation Survey

23. In the past year, how often did you use the following mediation techniques in your PERSONAL life that you learned in CWSL's Advanced Mediation class?

	Daily	Several Times a Week	Several Times a Month	Several Times A Year	Never
Active Listening (Listening for underlying emotions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Silence as a Listening Technique	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reframing Positions to Interests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Paraphrasing to Clarify What Was Said	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reframing into Neutral Language	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Role Reversal	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Summarizing the Issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Common Positive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cultural Awareness of the Parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personalities in Conflict (Competitive, Compromiser, Collaborator, Avoider, Accommodator)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Brainstorming Solutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Acknowledgment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

24. What motivated you to take the Advanced Mediation class?

25. To the best of your recollection, before you took the Advanced Mediation class, how interested were you in becoming a mediator?

- Very interested
- Somewhat interested
- Not at all interested

26. Did taking the Advanced Mediation class make you more interested, less interested, or did not affect your interest, in becoming a mediator?

- More interested
- Less interested
- Did not affect interest

## Advanced Mediation Survey

27. What are some of the reasons you became more, or less, interested in becoming a mediator?

28. Did learning these mediation techniques in CWSL's Advanced Mediation class affect your choice of employment after earning your degree from CWSL?

Yes

No

Please explain

29. Did learning these mediation techniques in CWSL's Advanced Mediation class affect your ability to get a job after earning your degree from CWSL?

Yes

No

Please explain

## Advanced Mediation Survey

30. Did mediating live disputes in the community for CWSL's Advanced Mediation class affect your choice of employment after earning your degree from CWSL?

Yes

No

Please explain

31. Did mediating live disputes in the community for CWSL's Advanced Mediation class affect your ability to get a job after earning your degree from CWSL?

Yes

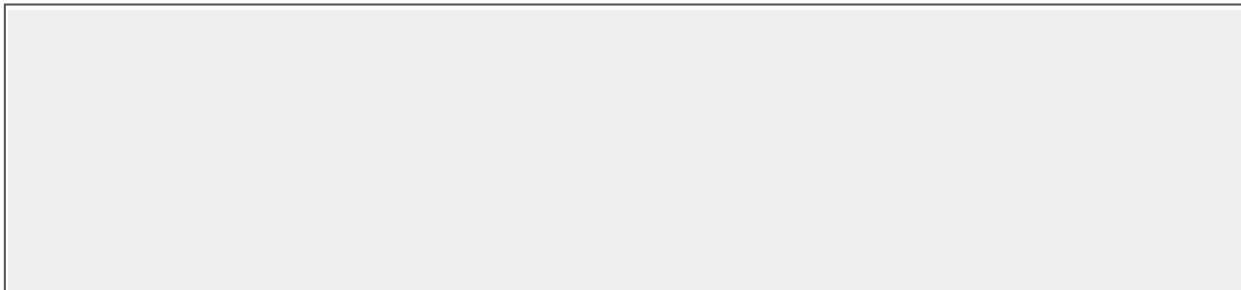
No

□

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—

## Advanced Mediation Survey

32. Is there anything else you would like to tell us about mediation and/or CWSL's Advanced Mediation class?



***APPENDIX B: INTRODUCTORY LETTER***

**To:**

**From:** "fle@cwsl.edu via surveymonkey.com" <member@surveymonkey.com>

**Subject:** California Westerns' Professor Einesman and Professor Morton could use your help.

**Body:**

Dear

I hope this letter finds you well and enjoying a productive professional life. I am doing research and I need your help! In an effort to encourage your participation in this project, I intend to award one random responder a new iPad and 10 random responders each a \$10.00 Amazon.com gift card.

While you attended California Western School of Law, you took the Advanced Mediation course with Professor Linda Morton, or me, Professor Floralynn Einesman, or us both.

Although it is hard for me to believe, approximately sixteen years have passed since Professor Morton and I created this course. We have made a number of changes to the class during that time. Nonetheless, our basic objective remains the same: training CWSL students in the skills of mediation so that they can mediate conflicts in the community. The class continues to mediate at Small Claims Court and in Juvenile Hall/ the Girls Rehabilitation Facility.

Over time, I have grown curious about what you as class alums are doing. I wondered whether you are using the mediation techniques we taught and whether you are serving as mediators either for pay or as a volunteer. I thought it would be interesting and informative to those of us who teach mediation to ascertain whether the course has produced any mediators and, if so, what type of mediations you are conducting. I am also interested in learning whether you are using any of the techniques we taught you in either your professional life (outside of mediation) and/or your personal life. I plan to write a law review article based on the information I glean from you.

As you can imagine, obtaining feedback from former students, like you, is not easy, but it is **CRITICAL** to this process. I would sincerely appreciate it if you would take the time to complete this 32-question survey by November 20, 2012. Responding should take no more than 10 minutes of your time.

Your responses are voluntary and completely confidential. Despite this personalized letter, I will not be able to connect the responses to any individual.

If you have any questions or concerns, please contact me at fle@cwsl.edu or at 619-525-1451.

Thank you in advance for your participation,

Floralynn Einesman  
Professor of Law  
California Western School of Law

***APPENDIX C: REMINDER LETTER***

To:

From: "fle@cwsf.edu via surveymonkey.com" <member@surveymonkey.com>

Subject: Last Chance to win an iPad by helping your California Western Professors!

Dear

I hope this letter finds you well.

Over the past two weeks, I have sent a survey to you, via Survey Monkey, in connection with a research project on the Advanced Mediation course which you took while you were a law student. You should have received this survey via email sometime within the last 14 days.

As I explained in my first letter to you, I intend to use the information that I glean from these surveys to write a law review article about the course, and law school in general. The responses that I have received so far have been enlightening, and extremely helpful towards my research. It has also been wonderful to hear about the satisfying careers and personal lives of so many former students!

As you can imagine, obtaining data from former students, like you, is challenging, but it is **CRITICAL** to this process. Please take some time to complete this 32-question survey by November 26, 2012. Responding should take no more than 10-15 minutes of your time

As an added incentive for you to help with this research project, I will be awarding one random responder a new iPad and 10 random responders each a \$10.00 Amazon.com gift card!

If you did not receive or cannot locate the link I previously sent you, here is a link to the survey. <https://www.surveymonkey.com/s.aspx>. If the link does not open in your email, please copy and paste the link into your browser. Your responses are voluntary and completely confidential. Despite this personalized letter, I will not be able to connect the responses to any individual.

If you have any questions or concerns, please contact me at [fle@cwsf.edu](mailto:fle@cwsf.edu) or at 619-525-1451.

Thank you in advance for your participation, I look forward to receiving your response.

Happy Holidays!

Floralynn Einesman  
Professor of Law  
California Western School of Law



***APPENDIX D: FINAL LETTER***

To:  
From: "fle@cwsu.edu via surveymonkey.com" <member@surveymonkey.com>  
Subject: Advanced Mediation  
Body:

December 19, 2012

Dear Advanced Mediation Alums:

Thank you for your participation in the Advanced Mediation research project. I sincerely appreciate your responses to the survey I sent you. I am grateful for the overwhelming number of responses I received. I am excited about reviewing your answers and analyzing the results. I will let you know in the future when I have written my article so that you can look for it.

I also wanted to let you know that we have randomly selected and notified the prize winners who completed the survey. Congratulations to all the winners!

I look forward to communicating with you in the future. In the meantime, I hope you have a very happy and healthy holiday season. Wishing you all the best for 2013!

Sincerely,  
Floralynn Einesman