

RESEARCH ARTICLE

Hidden in plain view: The impact of mediation on the mediator and implications for conflict resolution education*

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Empirical evidence shows that middle and high school students trained to be peer mediators experience improved communication skills, increased empathy, enhanced self-esteem, and improved academic performance. Yet scholars have not examined whether these benefits extend to mediators in other contexts. This article presents empirical evidence and theoretical support for the inference that mediation training and practice have a positive impact on the emotional well-being of the mediator. Given the documented increase of mental health challenges in today's society, this largely untapped potential of mediation to improve the well-being of the mediator has significant implications for conflict resolution education.

1 | INTRODUCTION

It is well documented that mediation provides substantial benefits to the disputants who participate in the process as well as to the court systems. Bowling and Hoffman (2003) introduced the opening chapter of their edited volume, *Bringing Peace into the Room*, by acknowledging that empirical research on mediation has consistently shown high rates of settlement and participant satisfaction. More recently, a statewide evaluation of court-affiliated alternative dispute resolution (ADR) programs in the State of Maryland concluded that participants who went through the ADR process versus the standard court process had both short- and long-term positive shifts in attitudes about their experience, including positive attitudes about the other party, the outcome, and the judicial system (Charkoudian, 2014; Charkoudian, Eisenberg, & Walter, 2017). Supporting the value of mediation to the courts, this same study found that cases in which agreement was reached in mediation were

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half as likely to return to court for enforcement actions as compared to those that reached a verdict in court. Many other studies throughout the years have confirmed that mediation saves the courts time and money by clearing dockets and reducing the number of cases that proceed to trial (Storror, 2017).

There is similar evidence in the organizational studies literature that mediation programs save private and public organizations both time and money while providing significant advantages for disputants. In their seminal work on dispute system design, Ury, Brett, and Goldberg (1988) found that data from the adversarial coal mining industry supported the claim that mediation increased employee satisfaction, reduced repeated conflict, and decreased costs of strikes and lockouts. Further studies have confirmed these findings, showing that mediation increases disputant satisfaction, perceptions of fairness, and long-term outcomes even over other forms of ADR, such as arbitration (Brett, Barsness, & Goldberg, 1996; Jameson, Berry-James, Daley, & Cogburn, 2017; Shapiro & Brett, 1993). In-depth studies of the U.S. Postal Service's REDRESS mediation program have found a variety of improved organizational outcomes of the program, such as improved conflict skills of the employees, reduced conflict overall, and reduced numbers of Equal Employment Opportunity complaints and employment claims that go to litigation (Bingham & Pitts, 2002; Nabatchi & Bingham, 2010).

Additionally, in the context of primary and secondary schools, research has shown that peer mediation programs provide substantial benefits to both the schools and the student disputants (Cohen, 2003; Jones, 2004). A comprehensive study of peer mediation in the United States found significant empirical evidence that peer mediation programs generate improvements in overall school climate and intergroup relations (Jones & Kmita, 2000). A meta-analysis of peer mediation further supports the conclusion that peer mediation increases students' conflict knowledge and skills, improves school climate, and reduces aggressive behavior (Burrell, Zirbel, & Allen, 2003).

Beyond recognizing the overall benefits of peer mediation programs for schools as described above, the peer mediation literature also emphasizes the advantages of mediation training and practice for student mediators. Most studies have found that students who receive mediation training reap the greatest benefits in terms of learning conflict skills (Stewart, 2000), using integrative negotiation behaviors (Johnson & Johnson, 1996), applying conflict skills to sibling conflicts (Gentry & Benenson, 1992; Johnson, Johnson, Dudley, & Magnuson, 1995), and improving perspective-taking ability (Lane-Garon, 1998, 2000; Mankopf, 2003). Studies have also shown that students who complete mediation training experience increased academic success, enhanced social and emotional competence, and reduced disciplinary action (Jones, 2004). Moreover, positive mediation outcomes for student peer mediators are not limited to the United States. A study of Turkish elementary school students trained in a conflict resolution program, which included skills involving empathy, anger management, and social problem solving, found that the training increased students' social competence and constructive conflict resolution skills and decreased their aggression levels (Akgun & Araz, 2014). Another study from Turkey found that students trained in peer mediation reported higher self-esteem (Kasik & Kumcagiz, 2014).

The foregoing evidence of the positive impacts of mediation training and practice on student mediators in the K-12 context is clear and substantial. Surprisingly, after a comprehensive search of the literature and conversations with mediation scholars and practitioners, we have found that outside the K-12 context, scant research exists that directly examines the impact of mediation on the mediator. We therefore propose to bring to light this unheralded, yet very powerful and positive, impact of mediation, with the goal of galvanizing the expansion of mediation training programs and thereby increasing the number of people who benefit from them. The first part of our essay's title, *Hidden In Plain View*, is adapted from Travis Pollert and Luke Frazier's documentary by the same name. In a commentary on the film, Seeds (2016) quotes Frazier's explanation that

“when you overlook the meaning of something, it can easily become hidden, even in plain sight” (n.p.), and thus it takes intentional action to reveal it. It is our intent in this essay to do precisely that.

As noted above, little empirical data exists on the impact of mediation on the mediator outside the context of student peer mediation. However, research does exist on the positive health benefits of three specific programs and practices that include skills used in mediation: social–emotional learning (SEL), mindfulness practice, and emotion regulation support. In this essay, we illustrate the substantial overlap between the essential skills of the mediator and the skills associated with those programs and practices and then present evidence showing the positive impact on the practitioner of applying the skills used in those programs/practices. Given this overlap, the empirical evidence we cite lends weight to our claim that what mediators learn and practice should have positive impacts on mediators’ emotional well-being. Next, we provide theoretical support for our inference that mediation training and practice have positive impacts on mediators’ emotional well-being by illustrating the conceptual alignment between mediator skills and the brain functions that have been described as essential to emotional well-being based on insights from neuroscience research (Siegel, 2010). In the final sections of the paper, we examine the mental health challenges that have been identified in two discrete populations—adolescents (Steinberg, 2014) and law school students and practicing attorneys (Krill, Johnson, & Albert, 2016; Miller & Bornstein, 2012)—to argue that more widespread mediation training and practice have the potential to spread positive impacts throughout these important groups.

2 | MEDIATOR SKILLS AND SEL, MINDFULNESS PRACTICE, AND EMOTION REGULATION SUPPORT: CONCEPTUAL OVERLAP AND EMPIRICAL RESEARCH

While there are different mediation styles (Charkoudian, 2012; Kressel, Henderson, Reich, & Cohen, 2012), scholars and practitioners appear to agree that essential mediation skills include active listening, asking questions to uncover underlying interests, awareness of nonverbal behavior, reframing perspectives and problems, and summarizing communication of the disputants (Charkoudian, De Ritis, Buck, & Wilson, 2009; Gilman, 2017; Moore, 2003). Two other widely recognized skills that the mediator must carefully balance during mediation are empathy, often described as the ability to put oneself into another’s shoes, which is required for effective listening and building rapport with disputants (Goldberg, 2005), and impartiality, the ability to convey an absence of bias (Heisterkamp, 2006; Rock, 2006). Additionally, some mediation scholars have called attention to the mediator’s awareness of his/her own thoughts and emotions as important for maintaining such impartiality (Rock, 2006) or for managing his/her own reactions to challenging personalities (Hoffman & Wolman, 2013) and high-intensity conflicts (Coleman, Kugler, & Mazzaro, 2016).

Finally, mediation scholars have focused attention on the need to recognize the disputants’ emotions during the mediation process and thus identify emotional awareness as a critical mediation skill. As Hoffman and Wolman (2013) have written, in order to be effective in their practice it is important for mediators to understand “the powerful psychological and emotional currents that flow through the mediation process” (p. 771). Further, Poitras and Raines (2013) discuss the crucial role that mediators play in helping disputants understand each other’s emotional needs. When mediators help parties recognize their emotions, it may move the disputants from defensiveness and suspicion to the openness and curiosity needed to engage in collaborative problem solving (Picard & Siltanen, 2013). Johnson, Levine, and Richard (2003) support this point with a quote from a mediation

workshop participant: “Emotions are present like an elephant in the room. As mediators, it is vital for us to acknowledge the elephant and invite it to be present. Emotions are a very powerful mediating tool because the conflict is really about emotions” (p. 803). With respect to this essential mediator competency, Jones (2005) has delineated three distinct skills: (a) decoding the emotional experience of the disputants; (b) helping disputants understand their emotional experience; and (c) facilitating disputants’ reappraisal of their emotional experiences to enable them to change their mindset.

2.1 | SEL competencies, overlap with mediation skills, and evidence of impact

We now examine the SEL curriculum that was created to promote children’s social and emotional development, compare the skills and competencies of SEL with mediator skills, and note SEL’s well-documented impact on K-12 students.

The Collaborative for Academic, Social, and Emotional Learning (CASEL) is a network of educators originally based at Yale University and now located at the University of Illinois-Chicago. CASEL designed the SEL curriculum based on five interrelated cognitive, affective, and behavioral competencies: (a) *self-management*—the ability to regulate one’s own thoughts and behaviors; (b) *self-awareness*—the ability to recognize, understand, and reflect on one’s own feelings and thoughts; (c) *social awareness*—the ability to understand and empathize with others, recognize social cues, and adapt to various situations; (d) *relationship skills*—the ability to listen well, communicate clearly, make friends, manage disagreement, recognize peer pressure, and cooperate; and (e) *responsible decision making*—the ability to make responsible, healthy, and ethical choices about one’s own behavior (Durlak, Domitrovich, Weissberg, & Gullotta, 2015).

A comparison between SEL competencies and mediation skills shows substantial overlap. In fact, SEL has served as a foundation for both conflict resolution education and K-12 peer mediation training programs (Jones, 2004). This makes sense in light of SEL’s focus on emotional awareness, as reflected in each of the SEL competencies, and on the importance that emotional awareness holds for the mediator with respect to both the disputants’ and the mediator’s own emotions as detailed above. Moreover, the mediator skills of active listening, asking questions to uncover underlying interests, awareness of nonverbal behavior, reframing perspectives and problems, summarizing communication of the disputants, and the ability to convey both empathy and impartiality all draw upon the mediator’s social and self-awareness and relationship skills.

Research has shown that school-based SEL programs have a positive impact on students in both the short and long terms. The positive, short-term benefits of SEL programs have been documented in hundreds of previous studies (see, e.g., DeVoogd, Lane-Garon, & Kralowec, 2016; Jones, 2004; Taylor, Oberle, Durlak, & Weissberg, 2017). One large study included over 6,500 students and compared 198 elementary school classrooms using the SEL-based curriculum “PATHS” with 180 control classrooms (Greenberg & Kusche, 1996). The PATHS curriculum, which focuses on problem solving, self-control, and emotional regulation skills, was shown to decrease aggression and hyperactive-disruptive behaviors. A separate longitudinal study of the PATHS curriculum found positive impacts on emotional understanding and interpersonal social problem-solving skills 1–2 years later (Greenberg & Kusche, 1996). More recently, a meta-analysis of 82 SEL programs in K-12 schools (38 of which were outside the United States) found that participants showed increased positive social behavior, improved academic performance, and decreased conduct problems, emotional distress, and drug use in studies ranging from 6 months to 18 years following the intervention (Taylor et al., 2017).

Given the congruence of SEL competencies and mediator skills illustrated above, the empirical evidence of the positive impact of SEL programs on K-12 students supports our claim that the skills

mediators are trained in and use while conducting mediation should have positive impacts on the mediators' emotional well-being.

Next, we illustrate the overlap between the elements of mindfulness practice and important mediator skills.

2.2 | Mindfulness practice, overlap with mediation skills, and evidence of impact

The popularity of mindfulness practice in the United States is often attributed to John Kabat-Zinn and the publication of his book, *Full Catastrophe Living*, in 1990. According to Kabat-Zinn (1990), living mindfully refers to being present in the moment and responding thoughtfully rather than reactively. Manusov and Harvey-Knowles (2015) further describe mindfulness as being composed of two components: self-regulation of attention (the ability to focus on a specific moment) and an orientation of "openness, curiosity, and acceptance" (Bishop et al., 2004, p. 232, as cited in Manusov and Harvey-Knowles). In an essay on the relevance of mindfulness to mediator neutrality, Rock (2006) defines mindfulness as "a means of cultivating an awareness of what exists in the present moment, without objective, ambition, or judgment" (p. 350).

Many of the components of mindfulness are consistent with SEL competencies (such as self-awareness and social awareness) and mediation skills. Rock (2006) contends that mindfulness practice benefits mediators because it allows them to recognize their own thoughts or emotions as they arise and respond in a conscious and intentional way, which is necessary for remaining impartial in a mediation setting. Another important part of mindfulness is an awareness that a person's thoughts do not define the person and are often fleeting (Rock, 2006). Mediators use this awareness in helping disputants become more open-minded and begin to think in nonhabitual ways; they do this subtly by asking disputants questions that help the disputants reappraise their emotions and reframe their initial perceptions of the conflict.

Empirical research reveals several important health benefits of practicing mindfulness (Davis & Hayes, 2011; Manusov & Harvey-Knowles, 2015). The most common mindfulness training is mindfulness-based stress reduction (MBSR), developed by Kabat-Zinn (Manusov & Harvey-Knowles, 2015). In a review of psychotherapy studies, Davis and Hayes (2011) identify three specific categories of benefits generated by MBSR training: affective benefits (such as emotion regulation); interpersonal benefits (including responding constructively to relationship stress and ability to identify and communicate emotions to one's partner); and intrapersonal benefits (such as enhanced brain and immune function and ability to manage distractions). Their review documents significant increases in self-esteem, self-compassion, and the ability to cope with stress as well as decreases in anxiety and depression among MBSR participants. The review also includes several studies of therapists, therapist trainees, and medical students in either 4- or 8-week mindfulness meditation training programs that found significantly greater levels of empathy among the study groups as compared to a control group.

In light of the close correspondence between components of mindfulness practice and skills of the mediator, the foregoing empirical evidence that mindfulness leads to increased emotional well-being provides conceptual support for our claim that mediation training and practice should have a positive impact on the emotional well-being of the mediator.

2.3 | Emotion regulation support, overlap with mediation skills, and evidence of impact

The third program or intervention we discuss is emotion regulation support as implemented in a recent study examining the potential benefits of using online messages to help others regulate their

emotions (Dore, Morris, Burr, Picard, & Ochsner, 2017). Specifically, the online messages consisted of verbal strategies that included validating another's emotional experience, expressing empathy for another's negative experience, and facilitating another's perspective taking and emotion reappraisal by helping the person find a new way to think about a negative experience (Dore et al., 2017). These helping strategies correspond directly with the essential mediator skills of active and nonjudgmental listening, paying attention to the disputants' emotional experience, conveying empathy, and helping the disputants understand and reframe their emotions in order to change their mindset, as outlined above.

The research by Dore et al. (2017) found that participants in a 3-week, online program who helped others regulate their emotions (vs. simply sharing with others or receiving support from others) showed greater decreases in depression than a control group. In particular, participants' use of the online verbal strategies of acceptance and reappraisal increased the positive effects of helping others. The study's authors concluded "in helping others manage their emotional reactions to stressful situations, even in an online (not face-to-face) way, we can practice and hone our regulation skills, which we can then apply to improve our own emotional lives" (p. 9). In other words, "by helping others regulate, we may enhance our own regulatory skills and emotional well-being" (p. 1). Given the similarity between this program and mediation practice with respect to the types of skills used (social-emotional skills) and the focus of skill application (helping others), these findings provide especially strong support for our contention that mediation training and practice have positive impacts on the emotional well-being of the mediator and suggest that a study investigating whether mediators benefit from helping others regulate their emotions during mediation would generate similar results.

In summary, the foregoing discussion illustrates the strong connection between SEL competencies, mindfulness practice, helping others regulate their emotion, and mediator skills and provides empirical support for our claim that mediation training and practice have a positive impact on the well-being of the mediator.

We now discuss the conceptual overlap between the brain functions essential to emotional well-being and the skills learned and honed in mediation training and practice.

3 | BRAIN FUNCTIONS ESSENTIAL TO EMOTIONAL WELL-BEING: CONCEPTUAL OVERLAP WITH MEDIATOR SKILLS

In his 2010 book, *Mindsight: The New Science of Personal Transformation*, Daniel J. Siegel, M.D., clinical professor of psychiatry at the UCLA School of Medicine, founding codirector of the Mindful Awareness Research Center at UCLA, and renowned child psychiatrist, presents nine prefrontal cortex functions that he describes as essential to emotional well-being. Importantly, his contention is that as we engage these prefrontal cortex functions, we cultivate healthy brain activity in much the same way we grow muscles by using them as we exercise. In this section, we discuss six¹ of these prefrontal cortex functions and illustrate their alignment with the skills mediators use in conducting mediation in order to bolster our claim that mediation training and practice have positive impacts on the mediator's mental health and well-being.

The first of these six brain functions described by Siegel, *attuned communication*, refers to allowing our own internal state to shift so that it may resonate with the inner world of another and thereby enable the other to feel understood. Many basic mediation skills are closely aligned with *attuned communication*, including active listening; asking open-ended questions to identify disputants' underlying needs and interests; awareness of nonverbal behavior; summarizing and

paraphrasing disputants' language; empathy; and the ability to recognize and understand emotions to enable the mediator to change his/her internal state to one that resonates with each of the disputants.

The second prefrontal cortex function, labeled by Siegel as *emotional balance*, generates a feeling of being both alive in the moment and at ease, so as to experience the vitality of life but not feel overwhelmed or out of control. Siegel also refers to this function as the ability to stay clear and focused in the face of storms from both our inner and outer worlds. This brain function is closely related to mediator skills involving awareness of one's own emotions in order to maintain impartiality and to manage one's own reactions to challenging personalities during mediation.

The third prefrontal cortex function essential to emotional well-being is *empathy*, the ability to understand and share another's feelings. This capacity is a basic mediator skill and central to other key skills of the mediator, including developing awareness of the parties' nonverbal behavior, helping parties recognize and understand their emotions and then engage in perspective taking, and summarizing and paraphrasing the parties' communication so they feel both heard and understood.

A fourth prefrontal cortex function is *moral awareness*, defined as the ability to consider what is right and fair for all rather than just for oneself. This is an essential ability for the mediator to draw upon in helping disputants reframe perspectives and engage in problem solving that meets both parties' needs and interests.

The fifth and sixth prefrontal cortex functions we discuss are *response flexibility* and *insight*. According to Siegel, *response flexibility* is the ability to pause before responding and thus create temporal space between receiving input from the outside world and reacting or taking action; *insight* is the ability to gain an accurate and deep understanding of oneself and make connections between the past and present. These brain functions enable a mediator to think before responding and to gain an accurate self-understanding—both of which correlate with mediator skills involving awareness of one's own emotions in order to maintain impartiality or the absence of bias.

In addition to discussing the brain functions essential to emotional well-being, Siegel describes the following three components of self-reflection that strengthen the abilities cultivated by those brain functions: openness, observation, and objectivity. *Openness* refers to withholding judgment. It involves being receptive to the current state and letting go of what "should" be. *Observation* is defined as the ability to consider one's feelings and behaviors in real time in order to disengage from automatic behaviors and begin to practice new ways to respond. *Objectivity* is the ability of an individual to see his/her thoughts and feelings as fleeting rather than permanent and as neither the totality of who the individual is nor reality; it is an "awareness of awareness" and a powerful skill that can free a person from the habit of automatic reactions (Siegel, 2010, p. 32).

Each of the components of self-reflection aligns closely with the work of the mediator. Mediators learn and practice all three as they are trained in and then conduct mediation. Specifically, they engage in *openness* by listening to disputants without judgment and being receptive to what the disputants are thinking and feeling rather than quickly identifying a solution to their problem. They engage in *observation* by paying attention to their own verbal and nonverbal cues and emotions to ensure that they are acting as impartial facilitators in the mediation process rather than invested parties with a stake in a particular outcome. Finally, mediators practice the reflective skill of maintaining *objectivity* by developing awareness that their momentary thoughts and feelings are temporary. Such awareness helps free them from triggering automatic reactions and enables them to remain impartial throughout the mediation process.

Moreover, mediators reinforce this reflective practice by helping each disputant engage in the same reflective activities. They move parties toward *openness* by helping disputants appraise their own emotions and engage in reappraisal by reconsidering their initial perceptions, attributions, and

interpretations. They help disputants engage in *observation* through paraphrasing and summarizing disputants' communication, thereby enabling the disputants to reflect on their feelings, perceptions, and actions before they respond. And mediators help disputants with *objectivity* by creating a space where disputants also hear the mediator paraphrasing and summarizing their opponent's perceptions, which often helps disputants realize that their interpretations do not reflect reality and allows them to reassess their previous responses and how they might move forward more collaboratively.

In summary, the foregoing discussion delineates a striking correspondence between the skills of mediators and the brain activity cultivated by six prefrontal cortex functions described by Siegel (2010) as essential to emotional well-being. By illustrating this conceptual alignment, we have demonstrated that the skills mediators use while conducting mediation engage the brain functions that cultivate emotional well-being and thereby promote the well-being of the mediator. This correspondence provides theoretical support for our contention that mediation training and practice have positive impacts on the mental health and well-being of the mediator. As Hoffman and Wolman (2013) have suggested, as mediators apply skills of emotional awareness to understand the disputants and facilitate conflict resolution, they increase their level of emotional intelligence and ultimately bring those same skills to bear on their own imperfections, thereby effecting growth in self-understanding and self-acceptance.

4 | IMPLICATIONS FOR CONFLICT RESOLUTION EDUCATION AND FUTURE RESEARCH

Our review of the research and scholarship on mediation skills, SEL, mindfulness practice, emotional regulation support, and brain functions essential to well-being lead to the compelling inference that mediation training and practice impact the mediator in ways that greatly enhance the mediator's mental health and well-being. This largely untapped potential of mediation to improve the well-being of the mediator has significant implications for conflict resolution education. In this article, we identify two distinct student populations that we believe, for reasons discussed in the following sections, could benefit substantially from more widespread training and practice in mediation.

The first student population we discuss is adolescents. Given the increase in mental health challenges for U.S. adolescents (Denizet-Lewis, 2017), and in view of the significant body of research from the United States and abroad that supports the benefits of peer mediation training for elementary through high school students, we believe it is more important than ever to incorporate peer mediation programs into our schools with the goal of dramatically increasing the number of such programs throughout the country.

Law students comprise the second student population that we believe would benefit from having mediation training and practice as a required part of their curriculum. As documented in a landmark study conducted by the American Bar Association (ABA) in collaboration with the Hazelden Betty Ford Foundation and entitled "The Prevalence of Substance Abuse and Other Mental Health Concerns among American Attorneys" (Krill et al., 2016), lawyers suffer from high rates of depression, anxiety, stress, and alcohol/substance abuse—in fact, higher rates than indicated by previous studies. Furthermore, the findings show that lawyers in their first 10 years of practice have the highest incidence of these problems. As the lead author of the study stated in an ABA press briefing, "Attorney impairment poses risks to the struggling individuals themselves and to our communities, government, economy, and society. The stakes are too high for inaction" (Krill, as cited in Podgers, 2016, n.p.).

The following discussion describes in more detail the mental health challenges confronting adolescents and those impacting law students and young lawyers.

4.1 | Current challenges confronting adolescents in the United States

Almost daily news reports document decreasing signs of emotional well-being among today's youth. A *New York Times* article dated October 11, 2017, reports an American College Health Association study which found that the percentage of undergraduates reporting feelings of "overwhelming anxiety" in the previous year increased from 50% in 2011 to 62% in 2016 (Denizet-Lewis, 2017). Along similar lines, a 2015 survey of more than 150,000 students nationwide found that the percent of respondents who *felt depressed* during the past year had risen 64% from the previous 5 years (Schwarz, 2015). A January 2015 story covered in both *The Washington Post* and the *New York Times* described the plan arising from Dartmouth College's 9-month review of campus life, which focused on ending the "extreme behaviors" (dangerous drinking, sexual assault, and other problems) that hurt too many students and undermined the important work of teaching and learning (Anderson & Svrluga, 2015; Perez-Pena, 2015). The December 2015 issue of *Atlantic Magazine* featured a lengthy article on the Silicon Valley suicide clusters among high school students and the aggravating risk factors of stress, distress, and depression (Rosin, 2015). Lastly, an article highlighting the "joy-killing, suicide-inducing performance anxiety" culture endemic to so many high schools across the country appeared in the April 9, 2017, Education Life section of the *New York Times* (Spencer, 2017, p. 14).

To summarize the current state of adolescence in the United States, Laurence Steinberg, professor of psychology at Temple University and an internationally recognized expert on adolescent psychological development, states the following in his book, *Age of Opportunity: Lessons from the New Science of Adolescence*:

When a country's adolescents trail much of the world on measures of school achievement, but are among the world leaders in violence, unwanted pregnancy, STDs, abortion, binge drinking, marijuana use, obesity, and unhappiness, it is time to admit that something is wrong with the way that country is raising its young people. That country is the United States. (Steinberg, 2014, p. 1)

One root cause of the problems of today's youth may be the ever-intensifying "race to nowhere" that emphasizes and rewards extrinsic and very narrow measures of student success (Attia, 2010). As quoted in an aforementioned *New York Times* article, one college freshman stated, "You have to get good grades, have all sorts of after-school activities that take up tons of hours, and you have to be happy and social—you have to be everything... that's a lot of pressure to live up to sometimes" (Schwarz, 2015, n.p.). This type of environment is characterized by intense focus on extrinsic achievement, a heavily time-pressured schedule, and a serious deficiency in diverse experiences and time to reflect on experience. Unfortunately, it contrasts starkly with an environment that nurtures healthy development of the adolescent brain, as discussed below.

According to the latest neuroscience research, the period of adolescence is expected to bring about a substantial remodeling of the brain's neural circuitry (Siegel, 2013). This remodeling involves the pruning of unused connections between neurons (the basic information processing structures in the central nervous system). It also increases myelination, a protective sheath covering the membranes among interlinked neurons that enables faster and more effective information flow between neurons. Lastly, the creation of additional linkages or connections between neurons—new

neural paths or circuitry—is supposed to take place during adolescence. These key changes increase the number and efficiency of connections or linkages between the prefrontal cortex (important in self-control) and the limbic system (important in processing of emotional information), sometimes called integration of neural circuitry or brain integration. This increased brain integration results in a corresponding increase in the adolescent's ability to regulate his/her emotions and engage in higher order thinking (planning, problem-solving ability, and judgment) called executive function behavior.

Experience is a key determinant of which circuits are pruned and which neurons are linked together in new circuits and protected by the myelin layer. Accordingly, the types of experiences adolescents have and where they focus their attention—that is, what they think about, what they talk with friends and family about, and what they spend their time doing—directly impact which neuronal connections or circuits are pruned, which undergo myelination, and whether new circuits are formed (Siegel, 2013).

Unfortunately, the experience-deficient diet of far too many adolescents in today's "race to nowhere" culture pressures them to focus all their energy 24-7, 365 days a year, on achievement that can be measured by extrinsic indicators (see Thacker, 2004). The essential purpose of these extrinsic indicators, such as grades, standardized test scores, extra-curricular activities, and social media entries, is for reporting on college applications and promoting image on social media rather than for pursuing the intrinsic goals of learning for its own sake and personal development. Almost no time remains for self-reflection and growth in self-awareness. This achievement-focused and time-pressured environment deprives our youth of the very inputs needed to grow their brains in healthy ways.

To recap our argument, the current climate for adolescents in the United States is distressing and, given the substantial benefits of peer mediation and conflict resolution programs discussed previously, incorporating peer mediation programs in primary and secondary schools seems to be one promising strategy for combating the serious mental health challenges plaguing today's adolescents. In review, peer mediation training and practice has been shown to enhance many aspects of personal and social development, including self-esteem, perspective taking, interpersonal skills, conflict management and negotiation behaviors (Gentry & Benenson, 1992; Johnson et al., 1995; Johnson & Johnson, 1996; Jones, 2004; Lane-Garon, 1998, 2000; Mankopf, 2003; Stewart, 2000), academic success, social and emotional competence, and reduced disciplinary action (Cohen, 2003; Jones, 2004). While there are examples of conflict resolution organizations such as JAMS (formerly the Judicial Arbitration and Mediation Services) and the Association for Conflict Resolution, as well as individual school districts, that continue to provide grant money for conflict resolution education and peer mediation programs in the K-12 school setting (Jones, 2014, 2015), a 2011 survey on the state of peer mediation across the country found that schools are having difficulty adopting and maintaining peer mediation programs, most often due to lack of funding (Cohen, 2011).

In sum, peer mediation is a concrete process that enables students to make a measurable contribution to the quality of school life while simultaneously providing students a practical and effective way to apply skills that are likely to improve their emotional well-being. Moreover, it strikes a healthy balance between adolescents' need for autonomy and their need for positive structure and guidance or supervision from adults to minimize the risks resulting from their immaturity and lack of experience (Cohen, 2003). The striking data on mental health challenges facing our youth suggest that this could be a persuasive argument to advocate for increased funding of peer mediation programs in primary and secondary schools throughout the country.

4.2 | Mental health challenges in the legal profession

As noted above, the ABA, in collaboration with the Hazelden Betty Ford Foundation, published the most comprehensive study ever conducted on attorney mental health in early 2016 (Krill et al., 2016). The results of this landmark study showed “alarming rates” of depression, anxiety, substance abuse, and alcoholism among the study’s nearly 13,000 currently practicing attorneys. The study’s lead author concluded that the status quo is unsustainable for both the lawyer population and society in general, given the important role of lawyers in government, business, and civil society (Krill, as cited in Podgers, 2016). A similarly timed article in the *Journal of Legal Education*, based on the first multi-school study in over 20 years, highlights serious concerns about law students’ mental health and their reluctance to seek help or support (Organ, Jaffe, & Bender, 2016). These are not, of course, the first studies to report the prevalence of stress and distress among those in the legal field. Empirical evidence showing the trend among lawyers toward increased rates of depression, drug and alcohol abuse, and overall social distress dates back to the 1980s and is well documented in the book *Stress, Trauma, and Wellbeing in the Legal System* (Miller & Bornstein, 2012). As Miller and Bornstein point out, these problems not only afflict attorneys, but also threaten the integrity of the legal system. While the authors do not discount the likelihood that certain common personality factors may exist among those who choose a legal career (i.e., competitiveness, achievement orientation, and materialism), they also point to aspects of the legal environment and the profession itself that lead to distress (Reed & Bornstein, 2012).

For many years, the literature examining the experience of students in law school has raised significant concerns about the effects of law school training and culture on law students, as noted in such statements as “the anecdotal literature suggests that the process of legal education impairs the maintenance of emotional well-being in law students” (Benjamin, Kaszniak, Sales, & Shanfield, 1986, p. 225) and the “legal education literature documents a number of disturbing effects of law school on students” (Hess, 2002, p. 75).

An empirical study of law students at two different law schools supported the foregoing negative portrayals of legal education and specifically found that a decline in law students’ emotional well-being was associated with their shift from intrinsically to extrinsically held values during law school (Sheldon & Krieger, 2004). In their study of several thousand attorneys across four states, Krieger and Sheldon (2015) found evidence that confirmed earlier research, stating conclusively:

...the psychological factors seen to erode during law school are the very factors most important for the well-being of lawyers. Conversely, the data reported here also indicate that the factors most emphasized in law schools—grades, honors, and potential career income, have nil to modest bearing on lawyer well-being. (p. 560, italics in original)

In a commentary on Elizabeth Mertz’s 2007 book, *The Language of Law School: Learning to Think Like a Lawyer*, law professor and anthropologist John Conley (2009) calls attention to Mertz’s insight that legal education devalues emotions and reduces people to little more than their position in the conflict. He discusses the argument of critical legal theorists that legal education instills new values in law students that undermine empathy for other people and their problems. He quotes Mertz’s contention that during the first year of law school students learn that “instrumental and technical appeals to legal authority blunt moral and context-sensitive judgment” (as cited in Conley, 2009, p. 39). In the words of one student quoted in the article, law school “beat the humanity out of us” (Conley, 2009, p. 42). Krieger (2008) makes a similar point by describing legal education as a

“process [that] would appear to train law students, via faculty instruction and modeling, to aspire to amorality and insensitivity—the precise ‘hired gun’ instrumentalism that professionalism efforts are seeking to eliminate” (p. 268).

A more current article considers whether lawyers’ happiness should matter to law firms, clients, state bars, and the judiciary. Bowling (2015) concludes that attorney well-being is an important component of legal professionalism and that “it is in the interests of enhancing the profession and its role in society that its leaders institute measures to better understand and promote it” (p. 39). He writes that other scholars agree on the interrelatedness of well-being and professionalism and specifically quotes Krieger’s proposition that “the values that promote professionalism—integrity, collegiality, honesty, decency—are the same that promote well-being, and their absence is shown to correlate with distress” (as cited in Bowling, p. 45). Finally, Bowling draws on the Aristotelian philosophy of intrinsic motivation to recommend that lawyers use their legal skills toward pursuit of a goal with intrinsic value in order to enhance their own well-being.

Despite the compelling evidence of widespread mental distress among law students and practicing attorneys, it is unclear how the issue is being addressed and whether systemic solutions are being proposed and implemented. Notable here is that in a seminal 1986 article on the role of legal education in producing psychological distress among law students, Andrew Benjamin and his associates suggested the need to revisit the legal education structure and curriculum, including the need to teach interpersonal skills such as interviewing, instilling others’ confidence in you, negotiating, understanding the viewpoint of others, and building relationships, the practice of which they believed would likely improve the student’s *intrapersonal* (italics in original) existence. These authors called for research on ways to reduce and prevent distress among law students, yet they also cautioned that research would be pointless if “people involved in legal education refuse to recognize the distress that many law students develop” (p. 251).

While the record suggests that there has been no comprehensive reform of legal education over the past 30 years, the ABA, in conjunction with the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers, formed the National Task Force on Lawyer Well-Being to promote nationwide awareness, recognition, and treatment in response to the 2016 ABA study on attorney mental health. The National Task Force produced a report called “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change” (Buchanan & Coyle, 2017). The Task Force Report seems path-breaking in its emphasis on the importance of well-being for lawyers. At the beginning of its August 14, 2017, letter accompanying the report, the Task Force states simply, “to be a good lawyer, one has to be a healthy lawyer” (n.p.). The letter continues with the authors’ recognition that “the current state of lawyers’ health cannot support a profession dedicated to client service and dependent on the public trust.”

Notably, one of the five central themes of the task force report’s recommendations is the importance of well-being as part of an attorney’s duty of competence. The authors define attorney well-being as the ability to thrive in six different dimensions of life, three of which are the following: the emotional (recognizing the importance of emotions and developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform decision making); the social (developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities); and the spiritual (developing a sense of meaningfulness and purpose in all aspects of life) (Buchanan & Coyle, 2017, p. 9). The task force also recognizes the need for “high-quality educational programs about lawyer distress and well-being” (p. 17) and further recommends that law schools be required to create well-being education as a condition of accreditation. The report goes on to say that “genuine efforts to enhance lawyer well-being

must extend beyond disorder detection and treatment. Efforts aimed at remodeling institutional and organizational features that breed stress are crucial, as are those designed to cultivate lawyers' personal resources to boost resilience" (p. 18).

4.3 | The case for expanding mediation training and practice in law school

In light of the empirical evidence and theoretical support we have presented for the claim that mediation training and practice impact mediators in ways that enhance their emotional well-being, we propose that requiring a course in mediation training and practice would be an effective approach to achieving the goals of the National Task Force. Such a course would teach skills that develop emotional awareness, communication, and relationship-building competencies. Additionally, the course would provide law students an alternative to focusing on extrinsic goals of grades and ranking by enabling students to derive intrinsic meaning through helping others and to increase their ability to thrive in those dimensions of life identified as critical to well-being by the National Task Force.

Moreover, such an approach would be consistent with neuroscience and cognitive research showing that students learn most effectively by doing (Ericsson & Pool, 2016)—that is, by practicing desirable skills over and over—rather than by attending lectures (Bajak, 2014). Thus, law students would be more likely to develop healthy perspectives and behaviors by taking a mediation course in which they learn and practice skills that focus on social-emotional awareness and regulation than by attending a lecture course on well-being topics.

The benefits to law students and lawyers generated through practices whose foundations, like mediation, are built on awareness and understanding of emotion, nonjudgmental listening, and intentional versus reactive behavior are corroborated by Austin (2014) in her article, "Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance." This article recounts the myriad ways in which legal education causes stress and makes a detailed argument for helping law students retrain their brains by learning fundamental neuroscience concepts concerning emotion and self-awareness, habitual behaviors, and neuroplasticity—the power of the brain "to change itself through the personal effort and choices of its owner"—and thereby enabling themselves to practice new, healthy behaviors and enhance their emotional well-being.

Interestingly, Austin's recommendations for law school curricula include teaching mindfulness, the practice of which, as we illustrated in the previous section, is closely aligned with mediation practice. Mediator Nan Waller Burnett echoed a similar perspective as she discussed the application of neuroscience to the work of conflict resolution practitioners in a program she presented as part of the Master Practitioner Series produced for the Maryland Judiciary Mediation and Conflict Resolution Office and the Maryland Program for Mediator Excellence. Specifically, she described how integrating brain processing, or thinking with your whole brain, corrects the errors arising from rigid, categorical thought and how neuroplasticity can lead to positive cognition—cognition that is vital to developing self-awareness, understanding of others, and dealing with stress (Burnett, 2014).

An additional way in which mediation practice enhances mediator well-being is identified in "the comprehensive law movement" (Reed & Bornstein, 2012, p. 30), which emphasizes holistic approaches to law practice, including problem solving with a focus on the well-being of the parties involved, and advocates for courses in mediation and other forms of ADR in law schools. Specifically, as Reed and Bornstein (2012) point out:

Because mediation encourages parties to resolve their disputes without the conflict promoted by the adversarial system, mediation and other forms of ADR are means of reducing attorney distress in the legal system. (p. 32)

In other words, mediation helps reduce lawyer stress by encouraging dispute resolution based on mutually beneficial solutions for both sides versus adversarial proceedings with outcomes in which one party always loses. For this reason, mediation training and practice is a particularly appropriate way for law students to learn and hone the social–emotional skills that are aligned with key themes and recommendations of the National Task Force on Lawyer Well-Being.

4.4 | Current state of mediation programs in legal education

The American Bar Association (2017) website reports 205 ABA-approved law schools in the United States. Of these, only 41 law schools are included in the most recent list of ABA-approved law schools with dispute resolution programs recognized by the ADR Section of the American Association of Law Schools (<http://law.missouri.edu/drle/dispute-resolution-programs/>). However, Robinson (2012) notes that interest in ADR curricula is growing. The evidence he cites of this growth is the contrast in attendance between a 2006 conference on teaching mediation in law schools, which included 25 professors, and a 2011 conference on the broader topic of ADR that attracted 150 professors (Robinson, 2012). Despite evidence that interest in ADR is growing and the number of ADR courses offered in law schools is increasing, Robinson ends his essay with a sobering conclusion that while progress has been made, law school faculty still privilege the doctrinal courses such as constitutional law and contracts over skills courses, and the idea of adding more skills courses to the law school curriculum is not widely embraced. This suggests that while legal educators are open to the idea of increased ADR education, we are not seeing wide-ranging institutional change as called for by critics of the current legal education process (e.g., Austin, 2014; Benjamin et al., 1986; Krieger, 2008; Reed & Bornstein, 2012).

Even those who question whether mediation should be a law school requirement agree that courses on communication, conflict management, and negotiation are needed to promote a mental shift for attorneys from adversarial to collaborative law practices (Verbeke, 2012). Given that mediation training includes attention to interpersonal skills such as active listening, understanding emotions, empathy, and habits of mind such as openness and objectivity—skills critical to an effective attorney/client relationship—there is little reason to believe that requiring mediation training in law school would have a negative impact. Moreover, as presented above, empirical and theoretical support exist for the inference that training students in mediation during law school would have a positive impact by teaching skills that help protect against the mental distress which is epidemic among law students and practicing attorneys and would thus be consistent with the key recommendations of the National Task Force. Furthermore, exposure to mediation training would provide a set of professional skills that are becoming increasingly important to lawyers given the expanding role of mediation and other forms of ADR in our legal system.

Although we currently lack direct empirical evidence for the claim that mediation training and practice would have a positive impact on law student and attorney mental health, we believe the connections we have made in this article provide a strong basis for such a proposition. Moreover, in light of the serious substance/alcohol abuse and other mental health problems within the legal profession, there is a compelling need to identify effective ways to increase the emotional well-being of law students and attorneys. Accordingly, we propose to follow the suggestion of Dore et al. (2017) to test “scalable interventions giving opportunities for socially oriented practice ... as means for the

transmission of core emotion regulation skills” (p. 9) by studying the impact of mediation training and practice on law students. If our proposed research were to support the trend found in peer mediation studies, we could make an important contribution to the critical conversation concerning how to most effectively teach and support well-being in law school by demonstrating mediation’s untapped potential to successfully address many of the mental health challenges confronting law students and lawyers while simultaneously providing a valuable set of law-related skills to benefit the profession.

5 | CONCLUSION

The benefits of mediation training and practice to court systems, organizations, and elementary through high schools have been well documented. Moreover, substantial empirical evidence suggests that students trained to be peer mediators experience personal benefits such as improved communication skills, increased empathy, enhanced self-esteem, and improved academic performance. However, scholars have not examined whether these benefits extend to mediators in other contexts. Increases in mental health challenges among adolescents, law students, and lawyers inspired us to closely examine the impact of mediation on mediators and shed light on what has been “hidden in plain view.” This article reveals significant alignment between the skills developed through mediation training and practice, skills taught in three programs with demonstrable and positive impacts on emotional well-being—SEL, mindfulness practice, and emotion regulation support—and core brain functions that are essential to emotional well-being. Based on this compelling overlap, we argue that more widespread mediation training as an intervention could greatly benefit both adolescents and law students by developing and strengthening social-emotional habits and communication skills that help to prevent underlying causes of stress and mental health problems. We conclude that the problems in both student populations are too large to ignore and pose significant risks to those struggling individuals as well as to society in general. We therefore propose to study the impact of mediation training and practice on law students, with the goal of promoting the expansion of peer mediation programs in K-12 schools and mediation training and practice in law schools.

NOTE

¹The three prefrontal cortex functions Siegel (2010) presents that we do not include in our discussion—*bodily regulation*, *fear modulation*, and *intuition*—are less clearly aligned with mediator skills than the six functions we discuss.

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