DISSERTATION ON ADVOCACY MEDIATION

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LLM in Transnational and European Commercial Law and Alternative Dispute Resolution
2012-2013
ABSTRACT

My research examines attorneys’ relationship with mediation and specifically how their presence affects the process of mediation itself. I try to analyze these two senses and present the interactive relationship between them and the way they are connected.

First of all in my introduction, I analyze the meaning of the term “mediation” as well as the different mediation forms that exist. I focus then on the differences between mediation and the other Alternative Dispute Resolution models, such as arbitration or mini trials and of course I refer the main benefits and drawbacks of the mediation process. I finish my introduction part with the explanation of the term “Mediator” and which roles he/she can play, something that I consider is necessary so as to understand the main topic which is the lawyers as mediators or as legal counsels in the process.

Following, I turn back in the history background and I write about the evolution of mediation and mediators in different States from the ancient years until now and I refer to the legislation of mediation in European Union as well as in other countries.

I separate the main topic of my research in four parts: a) Lawyers as gatekeepers of mediation, b) Role of lawyers in mediation and how they affect the process, c) Mistakes of lawyers during the mediation process and d) Parties’ participation in the process. These parts indicate the exploration of the motives of lawyers who have seen fit to engage with the process as well as the advantages and disadvantages that this involvement may have, their role during the mediation procedure and some small or sometimes crucial mistakes they may make. Finally, I underline that it is the parties’ choice of whether the lawyer attends the session(s), as well as the extent of participation by the lawyer in the process.

In the forth chapter I make a short review of the situation in Greece. Firstly, the framework of Mediation in Greece, meaning the Greek Law on mediation, some examples of Greek Mediators and last but not least, I add some research about what happening now and what are the future opportunities of mediation and lawyers in it.

In the final chapter I try to reach some conclusions about this Alternative Dispute Resolution model and this strange and interactive relationship between attorneys and mediation.
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PREFACE

Nowadays, an increasing number of jurisdictions have established mediation, or other alternative dispute resolution (ADR) processes as a prerequisite to adjudication. As one would expect the interaction of lawyers within mediation, like growth in the process itself, similarly varies considerably across different nation states. Lawyers in their droves have rushed to take up their place in the brave new world of mediation. Nonetheless, many more remain on the fringes unconvinced by the promise of mediation. In short, it can be said that the more ‘mainstream’ mediation has become in a jurisdiction, the more it tends to be populated by lawyers, at least in certain dispute areas. This is no coincidence\(^1\).

It should also be stressed here that the term ‘mediation’ is not an easy one to pin down in a definitional sense. Too many opinions have been expressed about it. Distinct mediation approaches have developed across a range of different contexts. In extremis, one ‘mediation’ process may be barely recognizable to another. While in some settings, mediation is no more than negotiation, meaning a quick way perhaps to bang heads together aided by the promptings of a third party, or in the words of Carrie Menkel-Meadow, “[i]n its most grandiose forms, mediation theorists and proponents expect mediation...to achieve the transformation of warring nation states, differing ethnic groups, diverse communities, and disputatious workplaces, families and individuals, and to develop new and creative human solutions to otherwise difficult and intractable problems...it is a process for achieving interpersonal, intrapersonal and intrapsychic knowledge and understanding.”\(^2\)

The effect that lawyers have had on creating particular normative mediation forms in different contexts and how easily they ‘fit’ into distinct manifestations of the process are exactly the key facets of my dissertation. In my work I will try to explain that the interaction between lawyers and mediation is a very complex, controversial and often emotive issue. Opinions, when expressed, are often hotly contested. In my work I also examine the motives of those lawyers who have become involved in mediation and equally those who have set their face away from the process. In both senses lawyers’ motives may be practical or principled; altruistic or selfish; informed

or fuelled by bare. This work also analyses the appropriateness of lawyer involvement (as well as the law that they carry with them) in mediation and the effect that the addition of lawyers has had upon the practice of mediation. It has been argued cogently, for example, that in certain contexts, lawyers have co-opted mediation and begun to reconstruct the process in their own image with legal bargaining taking the foreground. By contrast, mediation in some contexts has been subject to cogent critiques regarding it as a ‘law-less’ process, often foisted upon the weak and disempowered. In this context, many would see the inclusion of lawyers, either as mediators or party advocates, as a necessary legal fillip to protect the rights of participants.

Surveys of lawyers’ attitudes to mediation often paint a picture of a generally appreciative legal community positive in its outlook on mediation, at least in the abstract, although that does not seem to have necessarily translated into an upsurge in voluntary engagement with the process. Indeed, the pace of development of the process has varied significantly across different countries and in respect of distinct dispute areas within each jurisdiction. Despite decades of promotion and publicity, in many nations the practice of mediation and therefore the lawyers’ involvement with it remains disputable.

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INTRODUCTION

The meaning of mediation

Mediation as a means of settling disputes is getting a lot of attention these days. It is a big business that is practiced by lawyers and non-lawyers, and is closely related to the business of law.

Mediation as used in law is a form of alternative dispute resolution (ADR), a way of resolving disputes between two or more parties with concrete effects. In a mediation procedure, a neutral but well-trained third party, the mediator, aids the parties in the settlement of their disagreement, clear up misunderstandings, and find out concerns, so as to reach a mutually satisfactory settlement of their dispute. In International Law, mediation is the friendly interference of one state in the controversies of nations. It is recognized as a proper action to promote peace among nations. This alternative dispute resolution model has a structure, timetable and dynamics that "ordinary" negotiation lacks. The process is private and confidential, possibly enforced by a specific law each time. Disputants may mediate disputes in a variety of domains, such as commercial, legal, diplomatic, workplace, community and family matters. More specifically mediation may be used to deal with a range of disputes including: family disputes involving children (in appropriate circumstances) and/or money; neighborhood disputes; consumer disputes; and civil and commercial disputes (including, for example, disputes relating to building works or breach of contract). The process of mediation is often called as voluntary, although it may be urged by an agency like the Equal Employment Opportunity Commission (EEOC)

Mediation forms

Mediation can begin, unfold or terminate in a number of fashions: It can be initiated by one party’s proposal, a mutual agreement, the judge’s suggestion to the parties, the court’s reference to a mediation process in the course of litigation, whereas on the other side it can be terminated by one or both parties in mutual
agreement, or even the mediator’s conclusion, that the mediation process has failed to deliver the expected results. I will focus on two ways of introducing mediation, i.e. by means of a private agreement, or through court-annexed mediation.

a) Mediation through private agreement

An agreement between the parties to mediate is the rule in mediation proceedings. There are no binding requirements as to the time framework: Parties are free to agree before any dispute arises. They can also suspend judicial proceedings, in order to attempt a conciliatory resolution with the assistance of a mediator.

b) Court-annexed mediation

A court-annexed scheme presupposes the active participation of the presiding judge. Usually, the case is brought before the court, and in the course of those proceedings, the judge is proposing the parties to submit their case to mediation. Upon confirmation stated by the parties, the judge adjourns the hearing and orders suspension of judicial proceedings. The court has no authority to appoint a mediator, unless the parties ask for judicial mediation. The prospects are then twofold: If mediation succeeds, judicial proceedings will be terminated, and a special procedure for sealing the mediation agreement with enforceability could follow; if mediation fails, proceedings will resume before the court seized with the dispute in question. The case will then be tried according to Civil Procedure rules, and a court decision will be rendered⁶.

The differences between mediation and other ADR models

Mediation differs from other ADR models, meaning the procedures for settling disputes by means other than litigation; e.g., by Arbitration, or mini trials.

Mediation and arbitration are two different Alternative Dispute Resolution models, in spite of the fact that their point of departure is a common one. Specifically, in arbitration process the third party (arbiter) acts much like a judge but in an out-of-court less formal setting and he/she does not actively participate in the discussion. The most serious difference between mediation and arbitration is that in arbitration the arbiter hears evidence and makes a decision. Arbitration is like the court process as parties still provide testimony and give evidence similar to a trial but it is usually less formal. In mediation, the process is a negotiation with the assistance of a neutral third party. The parties do not reach a resolution unless all sides agree. The arbitrator renders a decision that is generally binding and almost always cannot be appealed. The process is more formal than mediation, although it is still usually less formal than litigation. Another difference between mediation and arbitration is in the ability of the parties to withdraw from the process. In mediation proceedings, neither party is required to complete the process or find a resolution because mediation agreements are not legally binding and either party can withdraw at any time from the proceedings. In the contrary, parties involved in arbitration, can withdraw only before a final decision is made and only if no arbitration clause has been signed. After a final and binding decision no withdrawal is permitted.

Benefits and drawbacks of mediation

One of the greatest benefits of mediation is that it allows people to resolve the charge in a friendly way and in ways that meet their own unique needs. The parties avoid spending too much time in courts and huge amounts of money to lawyers and litigation proceedings. Mediation is a fair and efficient process and it can help the parties to avoid a lengthy investigation and litigation. Another benefit of mediation is confidentiality. While court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediator(s) know what happened. Mediation increases the control the parties have over the resolution. The parties are free to make changes or decide the result over their dispute and have the total control, instead of court cases where a judge plays the dominant role over the case and its conclusion. Compliance with the mediated agreement is usually high because the result is attained by the parties working together and is mutually
agreeable, thus the costs are reduced. Last but not least, the mediator is a well-trained person and has experience in order to face and solve serious situations, guiding the parties through the process and broadening the range of possible solutions.

However, apart from the benefits mediation, as an alternative process for the parties, may have undesirable effects. It does not always result in a settlement agreement. Parties might spend their time and money in mediation only to find that they must have their case settled for them by a court. Further, if mediation fails, much of a party’s “ammunition” might have already been exposed to the opposing party, thereby becoming far less useful in the ensuing trial or lead to the ruin of his reputation. Mediation lacks the procedural and constitutional protections guaranteed by the federal and state courts. The lack of formality in mediation could be for this reason either a benefit or a detriment. Many discrimination cases, among others, are brought with the intention of not only securing satisfaction for the named plaintiff, but also with the hope of setting a new legal precedent which will have a broader social impact. These cases are only “successful” if a high court (usually the United States Supreme Court) hands down a favorable decision on the main issue. Mediation is therefore not beneficial for such cases.

The third parties who deal with mediation are usually well-trained neutral parties, called ‘mediators’, the meaning of whom I will analyze in the next paragraph.

Mediators

Mediator, as it was mentioned above, is a neutral third party who communicates, gives advice and tries to accomplish a result and bring the parties to an agreement. Mediators must be well-trained, gain the appropriate skills, tools, and credentials so as to resolve conflicts. Mediators are not advocates for either party. They are independent people committed to the process of problem resolution. Mediators work with people to find solutions to the problem that will work for both parties. The mediator’s roles can be several. Some of them are the following:

7See Advantages and Disadvantages of Mediation, http://nationalparalegal.edu
Convener

The mediator may help so as the parties to contact and for this reason he/she may arrange an introductory meeting.

Educator

The mediator educates the parties about the mediation process, other conflict resolution alternatives, issues that are typically addressed, options and principles that may be considered, research, court standards, etc.

Communication Facilitator

The mediator seeks to ensure that each party is fully heard in the mediation process.

Translator

When necessary, the mediator can help by rephrasing or reframing communications so that they are better understood and received.

Questioner

The mediator probes issues and confirms understandings to ensure that the participants and the mediator have a full understanding.
Process Advisor

The mediator comes to be trusted to suggest procedures for making progress in mediation discussions, which may include meetings, consultation with outside legal counsel and consultation with substantive experts.

Devil’s advocate

The mediator may exercise his or her discretion to play devil’s advocate with one or both parties as to the practicality of solutions they are considering or the extent to which certain options are consistent with participants' stated goals, interests and positive intentions.

Catalyst

By offering options for considerations, stimulating new perspectives and offering reference points for consideration, mediator serves as a stimulant for the parties reaching agreement.

Responsible Detail Person

The mediator manages and keeps track of all necessary information, writes up the parties' agreement, and may assist the parties to implement their agreement.8

As regards who can be a mediator the legislations differ from State to State. For example in Greece, according to the Greek Law, a mediator can be a third party who is asked to conduct a mediation proceeding in an effective and impartial way, regardless of the procedure by which he/she was appointed. In particular, in national disputes the mediator can only be a lawyer accredited by the Greek Accreditation Committee. On the contrary, in cross-border disputes, according to directive

8See Roles of the Mediator, http://mediate.com
52/2008/EC, it is not obligatory for the mediator to be a lawyer. It has been suggested but not yet become effective, that in exceptional cases, where expertise knowledge is required, professionals that do not belong in the field of Law may act as mediators. For instance the mediator’s profession can ask doctors, psychologists, civil engineers or judges. While performing this role, the mediator may be subject to court regulations or various codes of ethics.\(^9\)

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HISTORY BACKGROUND

Despite the general view that mediation is a new and modern alternative method to longstanding traditional dispute resolution mechanisms, it should not be forgotten that across myriad cultures forms of mediation have been present historically for centuries. Indeed “mediation is a folk concept which existed prior to the evolution of state law, legal system and lawyer-litigators.” Research on mediation has increased dramatically in the past ten years, which is probably a reflection of the rapid proliferation of mediation in practice. Mediation has long been an important part of industrial relations and international negotiation. One of the earliest recorded mediations occurred more than four thousand years ago in Mesopotamia when a Sumarian ruler helped avert a war and develop an agreement in a dispute over land (Kramer 1963). Another example of practicing mediation forms could be in pre-capitalist tribal societies in ancient Greek cultures as well as in mediaeval England.

Historically and presently mediation has been used all over the world including the following countries:

China and Asia, where Confucius believed that the best way to resolve a dispute was through moral persuasion and agreement rather than coercion. Peace and understanding were central to his philosophy. Today in the People’s Republic of China there is still an emphasis on conciliation, self-determination, and mediation to be used in the resolution of disputes.

Japan, where there is a relative absence of lawyers, probably because of their rich history of mediation. The leader of the village was expected to help people resolve their disputes. There are also many procedural barriers to formal litigation and this may contribute to an emphasis on the informal procedures of mediation. Today mediation is part of the business culture, where intermediaries are introducers, shokai-sha and mediators chukai-sha to smooth business relationships.

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10 See generally Roebuck (2007)
Africa, where any disputant may call for an informal neighborhood assembly called a moot. A respected member of the community serves as a mediator to help parties resolve conflicts cooperatively. The success of this form may be successful due to the extended kinship patterns within many African communities.

Islam, where Islamic culture has a strong tradition of mediation and conciliation as preferred approaches as seen in the use of quadis, specialized go-betweens who attempt to preserve social harmony by reaching an agreed upon solution to a dispute.

Western, Judeo-Christian Culture where there is a long tradition of mediation. Churches have been used as places of sanctuary and clergy often acted as mediators between criminals and authorities. In the Middle Ages, Christian clergy were called upon to mediate disputes between families and even in diplomatic disputes. Rabbinical courts used traditions and the Torah to settle disputes.

United States where there is along history of practicing both mediation and arbitration. Much of the early U.S. model of mediation was based on the work of the Quakers. In New York City the Jewish community established its own mediation forum. Chinese immigrants established the Chinese Benevolent Society to resolve disputes within the family and within the community by mediation.

In earlier history, in United Kingdom mediation became institutionalized in the twentieth century in the secular arena where it began to be recognized as having a role in and of itself. Department of Labor (established in 1913) appointing a panel called the "commissioners of conciliation" to deal with labor/management disputes. These commissioners became the U.S. Conciliation Service and in 1947 that entity became the Federal Mediation and Conciliation Service. Some of the early writing in ADR drew on the experiences of labor and industrial dispute resolution and adapted it to the resolution of interpersonal conflict13.

Since the earlier years, the USA has experienced a gradual development of the use of extra-judicial forms of dispute resolution such as mediation14. It should also be mentioned that efforts for mediatory processes have historically been embedded

13Source www.MediationADR.net
14An excellent review can be found in Auerbach (1983), Chap. 1
within the legal systems of many civil law countries including much of continental Europe mainly through the role of the ‘settlement judge’ (including the *Juge de Paix* in France and *Vrederechters* in the Netherlands)

In modern times, the ADR movement can be largely traced back to its emergence in the 1970s, USA deriving primarily from the National Conference on the Causes of Popular Dissatisfaction with Administration of Justice (the ‘Pound Conference’) in Minnesota in 1976 in which Professor Frank Sander is credited with first coining the phrase,’ Alternative Dispute Resoluti.’ Thus, mediation is often characterized as Anglo-American development; however, in the Pound Conference era parallel debates regarding the establishment of alternative forms of dispute resolution were concurrently taking place in Europe, such as those promoted by the Florence Access to Justice Project. Unlike its European equivalents, however, the Pound conference had a major and almost immediate impact on expediting the process of mediation in its native land.

Mediation came into play with the advent of international treaties. Since there was no existing “world law”, groups like the League of Nations or the United Nations incorporated provisions for mediation into their rules, or what we now call international law.

In some senses, it can be said that despite its ‘alternative’ billing, the modern ADR movement was something that lawyers, peddlers of traditional dispute resolution, largely constructed themselves. While the father of the term ‘ADR’, Professor Frank Sander, is an academic lawyer, more importantly perhaps, the pioneering ADR movement was propelled by the significant support lent to it by a spate of leading figures prominent in the US legal profession of the time, including most prominently Chief Justice Warren Butger. A consequence of linking ADR’s role with the fate of litigation allied to the involvement of lawyers and judges in the movement was an intertwining of the alternative with the traditional. ADR thus became to be generally promoted not on its own footing but rather as an appropriate diversion from the court generally for cases of perceived lesser import. Despite the

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15 Sander (1979). The theoretical origins of modern mediation can be charted back to the works of Lon Fuller and other eminent legal jurists. For a stimulating summary of mediation’s theoretical nascence, see Menkel-Meadow (2000)
16 Cappelletti (1978)
18 Roberts and Palmer (2005), p. 66
enthusiasm of these grassroots pioneers, many of their programmes quickly fell into abeyance and those that survived were often subsumed into traditional justice systems. While some community programmes appeared to enjoy a measure of ‘success’ willing participants were generally a scant commodity. As Nancy Welsh has noted “[u]nfortunately, a relatively small number of disputants actually chose to take advantage of the new process. Most disputants continued to turn to the courts for resolution of their disputes. By the mid-1980’s, despite [community] mediation’s genesis out of a marked dissatisfaction with the judicial process, many grass roots mediation activists were advocating for the institutionalization of mediation within the courts because that is where parties and their disputes could be found.” It is of course true that many such early initiatives were poorly resourced and lacked the oxygen of publicity to attract disputants. Equally, there is some evidence to suggest that would be participants in general simply placed more value in the potential for rights vindication through the courts rather than seeking harmonious, community based resolution. In any case, the demarcation between efficiency proponent’s schemes and those of quality proponents began to fall away as binds began to form between the courts and mediation programmes.

Thus, the modern development of mediation is characterized by the meeting of two disparate groups, with two largely separate agendas. Evidence suggests that across the globe in the modern context, mediation tends not to develop well without some form of institutionalization or embedding within traditional legal processes. Such relocating within traditional dispute resolution sites has led to the development of models of mediation which may implicate rather than eschew the role of the lawyer.

To conclude with, globally, the modern mediation movement has at least in part been instigated and propelled by lawyers. Progress has clearly been uneven both within and across different jurisdictions. In the historical development of mediation,

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20 In terms of settlements produced and user satisfaction -see Welsh2001, p. 20
21 Welsh (2001), p. 20 (internal citations omitted)
22 See generally Engle Merry (1990)
23 In terms of why many early schemes failed, in their review of the early ‘Community Boards’ experiment in San Francisco, Merry and Milner (1995) found that the reality of a ‘community’ upon which shared values could provide a basis for settlements, did not in fact exist in modern life and was no more than a romantic reflection of an indigenous community that no longer existed. The case-load was low and had little effect on community empowerment and settlements reached tended to reflect individual interests of disputants rather than any shared community norms.
however, the pursuit of efficiencies and diversion from traditional courts were clearly significant drivers for reform from, amongst others, the legal profession.

**Legislation**

In the European Union “Directive 2008/52/EC of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters” provides a framework for cross-border mediation. The Mediation Directive dates from 21 May 2008, has been in force since 13 June 2008 and requires the European Member States (except Denmark) to implement the necessary laws, regulations and administrative provisions by 20 May 2011 at the latest. A strong regulatory impetus has emanated from the Mediation Directive. Many Member States reacted by not only regulating cross-border mediations as required, but extended their law reforms to cover purely national mediations as well. Member States that have come forward with a comprehensive reform of mediation law since June 2008, when the Mediation Directive came into force, are, for example France, Germany, Greece, Italy and Spain. The development towards more intensive regulation of mediation seems to follow the example in the USA, the pioneer jurisdiction of mediation, which has seen a regulatory increase over the years.

Already, there are many efforts underway to regulate the mediation profession, but much of this is a work-in-progress awaiting further empirical study. The regulatory approaches as regards mediation and as far as who can be a mediator, (lawyers and other professions) differ substantially in Europe and beyond. For example, in Greece Law 3898/2010 on mediation transposes the Directive 2008/52/EC. The Law applies to all mediations, cross-border and internal. According to the Greek law the mediator must be a lawyer accredited as mediator by a competent Accreditation Body for domestic mediations.

Another significant example relating the mediation and its application was just recently, in Italy. On September 20, 2013, a new regulation came into effect, opting for mandatory mediation. This new regulation had a lot of Protestants, especially from the legal world. Now the law has been rewritten, with significant modifications. In this case lawyers also enjoy preferential treatment as mediators.
While it is necessary to attend a course and pass a professional examination to achieve an accredited mediator qualification, lawyers are mediators “by right” (but they will be required to receive training, and limit themselves to mediation of cases in which they have specific legal competence, in compliance with the provisions of Article 55 bis of the lawyers’ code of ethics)\(^2^5\).

Another case of different legislation is that of United States where, the laws governing mediation vary by state. Some states have clear expectations for certification, ethical standards and confidentiality. Some also exempt mediators from testifying in cases they've worked on. However, such laws only cover activity within the court system. Community and commercial mediators practicing outside the court system may not have such legal protections. State laws regarding lawyers may differ widely from those that cover mediators.

A highly important matter which I will focus on in this chapter and it will be the main topic of my dissertation as I mentioned above, is the mix of lawyers with mediation. It will also be an exploration of the motives of lawyers who have seen fit to engage with the process as well as the advantages and disadvantages that this involvement may have.

Among the more hotly debated issues concerning appropriate qualifications for mediators is the question as to whether it is preferable for mediators to also be lawyers. In many states, a law degree is a prerequisite for being listed as a court approved mediator. While most jurisdictions permit disputants to choose any mediator, non-attorney mediators are not always considered by court referred disputants. This is because, for most people, it is just easier to pick a name from the court approved list than to do their own research. The rationale for requiring a law degree and legal experience rests on two assumptions. First it is assumed that mediation is a natural extension of legal training and that it is a skill readily acquired by attorneys. The second is that because most disputes involve complex legal matters, legal experience is necessary to bring these matters to a satisfactory conclusion and guarantee justice, especially in cases where one or more parties are unrepresented. Because attorneys are the traditional gatekeepers of the justice system, it is important to examine these assumptions closely.

In order to determine the influence of attorneys on the mediation process, two researchers compared divorce mediation in Georgia with that in other parts of the U.S. In Georgia, divorce mediation enjoys nearly universal acceptance by judges and lawyers. Mediation and settlement tends to occur more frequently in Georgia because there is a greater emphasis on outcome (agreement) than on process concerns, such as the depth to which the dispute is resolved and disputant satisfaction. So a well-satisfying majority of some researchers reached the conclusion that the vast majority of divorce mediators in Georgia are attorneys and a great many are simultaneously engaged in the practice of law.²⁶

Lawyer mediators tend to stress legal knowledge and skills, such as drawing out the facts of the case, analyze, explain and clarify them to their clients and generally help them to find the most suitable solution for them through their mentoring. An advocator is the most special one in legal matters; he knows how to protect his client’s interests in a court or out of it, better than, for instance a doctor or a civil engineer. A lawyer is most of the times experienced and prepared from his law school for every civil, criminal or administrative case it can be occurred and of course he/she has the ability of negotiation, of competition and facing the problems and conflicts between the parties.

However, attorneys still need extensive training in mediation after law school. In other words, mediation is not a natural extension of the practice of law, because mediation permits a broader definition of conflict as well as a more complete approach to its resolution. Because attorneys are schooled in, and acculturated to, the adversarial approach, it is very difficult (but certainly not impossible) for them to be equally accomplished in a more collaborative approach to settling disputes. There is no evidence to suggest that simply because a conflict may involve issues of law, that legal skills are more relevant to facilitating its resolution than human relations and negotiation skills. Thus, it is unethical for mediators to give legal advice in mediation.

If parties need legal or any other kind of advice, they are expected to obtain it outside of mediation. However, having a legal background can be advantageous in many mediation situations. Offering disputants this kind of legal information can be quite helpful, but it should also be remembered that it is not necessary to be an attorney to provide legal information. One should also remember that being an information provider is only a small part of what mediators do.

So, how much substantive knowledge a mediator needs is difficult to specify. Complete ignorance of the legal context might cause disputants to unknowingly enter into agreements which a court might consider inappropriate or illegal. At the other extreme, too much substantive expertise can put the mediator's neutrality at risk by biasing them toward standard solutions and diverting their attention from underlying interests and needs. However, if the parties desire a case evaluation or a prediction as to how a court would rule on a particular issue, then the neutral would need a high
degree of substantive knowledge and would probably need to be an attorney. Thus, while there may be certain advantages to having a legal background, there may also be some disadvantages which should be kept in mind when choosing a mediator for each different case.

Simply put, lawyers may naturally see mediation as a legitimate commercial opportunity, falling within their existing sphere of practice and expertise, to offer services in a new and growing market.

Finally, I definitely could not omit to refer the high lawyer’s resistance to mediation because of their own personal reasons. It is a pertinent question to ask why this is the case. A whole raft of different factors may be relevant to lawyers’ resistance to mediation. Some reasons may appear legitimate or altruistic in their nature, while others seem less acceptable and perhaps, it may be suspected, even emanate from somewhat dishonorable motives on the part of lawyers. Reasons for objections to mediation, which may, prima facie at least, appear more legitimate, include: concerns about the lack of quality assurance in mediation services; unregulated practice; simple lack of client demand; fears over disingenuous use of the process by opponents and arguments based around the efficiency of mediation (e.g. how quick or cheap it actually is) relative to other forms of dispute resolution.

Lawyers as gatekeepers of mediation

It is often remarked, that lawyers are ‘gatekeepers’ to mediation’s development. Given this fact as a true, the argument follows that it is crucial that if mediation is to flourish then lawyers must be brought on-side with the process. While lawyers are doubtless often instrumental in legitimizing mediation in the eyes of their clients, and empirical studies seem to bear out this assertion in many contexts, the influence of lawyers over their clients in the course of a dispute clearly varies considerably. In fact there are undisputable assertions that lawyers act as gatekeepers

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in the way that they protect their clients from any barriers they face and what might be done to better sell the process to them. Indeed, as noted above, numerous studies have suggested that lawyers have become increasingly receptive to mediation as a form of dispute resolution, at least in the abstract.

In order for our society to reap the benefits of mediation while containing its risks, every lawyer must come to understand mediation and a significant number must develop an ability and willingness to mediate a variety of matters that are currently pushed through the adversary mill. The idea that that lawyers serve as important intermediaries between clients and the legal system is far from novel. Sociologist of law have long studied the ways in which attorneys help their clients understand legal rules and relate them to individual problems, operate legal processes and work with legal institutions.

As part of this scholarly tradition, in recent years, greater attention has been given also to the role that attorneys play in mediation. In the following paragraph I try to examine the crucial role that attorneys play before during and after the process when a case will be referred to mediation.

Role of lawyers in mediation and how they affect the process

A lawyer might assume various roles in mediation process. As I referred earlier in many legislations a lawyer may be a mediator or he/she can be the legal counsel of the party(ies). This latter role I will try to analyze for the specific time periods of the mediation procedure.

Before Mediation begins

The attorney assists the parties in making informed decisions about the mediation process before it starts and with this way the lawyer helps the parties to take

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30 Austin Sarat& William L.Felstiner, Law and Strategy in the Divorce Lawyer’s Office, 20 LAW & SOC’Y REV.93,93 (1986)
responsibility for resolving the dispute, consistent with the principles of mediation. The lawyer also explains to the party the nature of the mediation process, what to expect during mediation, the relevant law governing the mediation process, and how the mediation process complements the court procedures. Finally, he/she helps the party(ies) make an informed choice of a mediator based upon such factors as the nature of the specific case, the background and experience of the mediator, and the potential fees involved.

The lawyer may want to assist the parties in determining whether timing is a factor in choosing mediation. For example, the lawyer may recommend mediation at the beginning of the case in order to explore settlement before positions become entrenched, or may recommend that mediation be deferred until completion of all or part of the discovery process.

Another role the attorney may play before the beginning of the mediation process could be the advisory one. He/she advises the parties on the substantive law relevant to the case. This enables the party to understand the range of outcomes that are possible if the case is litigated and to formulate a range of acceptable outcomes for the mediation process. For example, in a personal injury case, the lawyer may advise the party on the range of outcomes regarding liability, the range of possibilities for a money judgment, and such options as structured settlements. Advice that helps the party understand that there may be more than one solution which meets that party's needs helps the party enter mediation willing to consider various options for settlement.

During mediation

As before beginning the process, the lawyer continues to advise the party on the substantive law relevant to the case, helping the party understand what information might be important to share or to learn during the mediation, the options that might be available, the potential consequences of each option, and the possible outcomes to anticipate if agreement is not reached through mediation.

Throughout the mediation process the parties are encouraged to take responsibilities for resolving the dispute. These responsibilities include participating actively in problem-solving discussions and expressing their point of view with the
assistance of a trained neutral mediator. The lawyer's role is to assist the parties in negotiating for themselves, bearing in mind the non-adversarial nature of mediation. The lawyer guides the party in negotiating by encouraging the parties to express thoughts and feelings, helping the party define interests, and helping the party gather and examine all the consequences. In addition, he or she can guide the parties through settlement discussions whether the lawyer attends the mediation sessions or not. The lawyer may consult with and advise the party before and after the session(s). The lawyer might also advise the party(ies) of when it would be wise to request a break in mediation for the opportunity to consult the lawyer for additional information and advice. In some cases, the party(ies) and the lawyer may arrange for the lawyer to be available by telephone for consultation while the mediation is being conducted. More generally, the lawyer manages the legal process for the party while mediation is being conducted, keeping the party informed of important dates, responding to and filing necessary pleadings, and conducting discovery.

The role of a lawyer in mediation differs and from State to State. For example in Greece, the law 3898/2010 defines that the lawyer’s role in mediation process will be twofold. From one side he or she will be the mediator and from the other he/she will be the legal counsel.

To sum up, the lawyer in mediation acquires very significant roles such as the informative, the advisory and the guiding one as well as one of the most experienced and well-trained person in legal matters so as to help the parties to reach to a satisfying solution for them. He is not a judge or an investigator as it happens in adversarial cases and in courts but he offers his assistance as third neutral person away from the strict and limited legal background that court case very often follow. So lawyers in this mediation case should have a more flexible and negotiating character in order to create a calm and harmonic atmosphere and face the dispute successfully. He/she should have communication and understanding skills and surely not cruel and absolute behavior towards his clients or to the other side parties just like he could be in a trial for policy reasons. Finally his goal should be the conciliation and improvement of the relations and of course the avoidance of any other conflicts between the parties. After all, his/her work is not a battle for him/her to win but a problem to be solved!
After Mediation

The lawyer assists the party in reviewing the terms of any mediated agreement, testing the party's understanding of the terms, and in some cases, preparing formal agreements. If no agreement or only partial agreement has been reached, the lawyer assists the party in continuing the process, which eventually will dispose of the entire case through trial or further settlement efforts.\(^{31}\)

**Effects**

The next question which I will attempt to answer is how the presence of lawyers affects the process of mediation.

In a study of workplace disputes handled by a professional mediator in Québec, Canada, mediations conducted with attorneys present were just as likely to be settled as were those without attorneys present. More specifically: the presence of attorneys didn't significantly slow down the mediation process, affect how fair parties viewed the process to be, or alter how satisfied they were with the agreement. A couple of difference did emerge. First, when attorneys were present, parties viewed their mediators to be somewhat less useful. Second, parties were less likely to reconcile with each other when attorneys were present. Overall, though, the study finds some evidence that lawyers, contrary to their reputation, do not obstruct agreement in mediation.\(^{32}\)

So we can detect two aspects of the participation of an attorney in mediation process. First, the lawyer can play a significant and very useful role during the process with no much influence for the parties’ will and motives. The other side is that the attorneys influence in a harmful way parties’ behavior as the last ones cannot decide

\(^{31}\)Geetha R., Role of attorneys in mediation process, http://www.americanbar.org

for themselves and as a consequence, they follow their attorneys’ view and finally they cannot easily reconcile and find a solution for their initial dispute.

**Mistakes of lawyers during the mediation process**

Effective representation of clients in mediation requires the same level of preparation, diligence and assertiveness as is required in presenting a jury trial. The outcome of a mediation session depends, to a large degree, on the performance of counsel.

Failing to communicate willingness and ability to try the case.

In the vast majority of instances, the parties on both sides are better off settling then taking their chances before a judge, jury or arbitrator. On the other hand, the key to achieve a reasonable settlement for a client is to make clear that counsel is ready, willing and able to try the case. Unfortunately, some lawyers have the reputation that they will settle any case, on the courthouse steps if necessary. Opponents know this, and act accordingly, even in mediation.

Lawyers should cultivate a reputation for being willing to go to trial when necessary. Such a reputation cannot be credibly created during the course of the mediation of a single case, but rather requires diligent preparation and effective presentation of adversary proceedings over the course of a career.

Attorneys and parties should participate meaningfully in the mediator’s effort to explore weaknesses as well as strengths of a case. On the other hand, after full exploration of a case and careful consideration of the settlement positions of the other side, there are indeed cases in which it is appropriate to walk out of mediation.

Making aggressive "opening statements."

Most lawyer-mediators in business or personal injury cases conduct a short opening meeting with all sides present. After explaining the mediation process and confidentiality, most mediators invite comments from each side. The trend is away
from using this opportunity to present aggressive or inflammatory statements of the case.

It is often best to say nothing or perhaps to state that while one’s client feels strongly about the correctness of his or her position, the client is here to bargain in good faith, or words to the effect. We can leave it to the neutral mediator, in private caucus, to discuss problems with the opponent about its case. The message is often more effective and clear when delivered through this means. On the other hand, of course, we should be prepared for similar treatment by the mediator during private caucus with one’s own client.

Mediating without necessary parties.

There are often parties that should be represented at a mediation, who may not be formally named in a lawsuit.

Mediating with persons with insufficient authority.

One of the biggest frustrations for lawyers, parties and mediators is to spend long hours in achieving agreement in principle, only to learn for the first time that the proposed settlement needs to be presented to a company officer or committee for approval and ratification. The mediation process is most effective when the mediator has the opportunity to talk, face-to-face, with the decision-maker for each party.

Mediating too early or too late in the case.

Every case is different, and it is difficult to state hard and fast rules as to when mediation should be considered. It sometimes makes sense to attempt immediate mediation of exigent problems, particularly where the parties have an ongoing relationship that they desire to protect. On the other hand, some level of preparation, investigation and discovery is often necessary to enable counsel to render a reasonable evaluation of a client’s position. Sometimes mediation on the eve of trial is appropriate, but often lawyers do their clients a disservice, financially and emotionally, by waiting that long.
Failing to adequately prepare the case.

It is a rare mediation that requires the same amount of preparation as a jury trial, but counsel should not underestimate the work necessary to do the job right. It may not be appropriate to look under every rock, but the lawyer in mediation should know what rocks are out there. Mediation is nothing other than an accelerated, facilitated negotiation. As in all negotiations, knowledge is power.

Failing to adequately prepare the client.

Experienced litigators never take their clients to deposition or trial without thorough preparation. The same should go for mediation. The client should understand ahead of time the general nature of the process, including the rules of privilege and confidentiality in mediation, and in the non-binding nature of the process. Even more importantly, the client should have the benefit before the mediation of his or her lawyer’s evaluation of the case, and potential pitfalls and weaknesses. Clients appreciate aggressiveness and diligence on their behalf, but also respect honesty and candor from their lawyers.\(^3\)

\(^3\)Source: article originally appeared in the Oregon State Bar Bulletin (June 1999) October 2000 by Richard G. Spier
Parties’ participation in the process

The choice of whether the lawyer attends the session(s), as well as the extent of participation by the lawyer, ultimately belongs to the party. The party makes his or her choice after discussion with the lawyer and consideration of the lawyer's advice. Because the success of the mediation process depends, among other things, upon each party making informed decisions in resolving the dispute, the lawyer's task at this stage is to enable the party to make an informed decision about these issues.

A party suffers no prejudice if he or she chooses to attend mediation without his or her lawyer present. Dispute resolution proceedings are not on the record. Rules of evidence do not apply. Mediators do not make any findings of fact and do not impose any decisions upon the parties. While mediators may encourage and assist the parties in resolving their dispute, they are prohibited from compelling or coercing the parties into a settlement. Va. Code § 8.01-576.9. It should be mentioned that even when the lawyer is not present at the mediation session(s), a party may consult with his or her lawyer before and after the mediation session(s), or by telephone during breaks in the mediation session(s). In addition, mediators are required to encourage each party to review any mediated agreement with his or her lawyer prior to signing it. Va. Code § 8.01-576.12.

Since nothing about the mediation process itself suggests that a lawyer must attend the mediation session(s), the decision depends primarily upon the party's needs within the context of the mediation process. While some people attempt to generalize the role of lawyers according to case type (e.g., "You need a lawyer in personal injury mediation, but not in a domestic relations mediation."). it is the needs of the parties (such as the information, resources, and real and perceived power of each), that drive the decision to have a lawyer present in mediation, not the case type. However, the fundamental consideration is whether the party is capable of participating effectively in the process without the lawyer's presence. This consideration encompasses two distinct levels of inquiry: whether a party suffers from any personal impediments to effective communication, and whether the nature of the relationship between the parties impedes effective communication. If the party can participate effectively in the mediation process without his or her lawyer present, the lawyer needs not to attend the mediation. If circumstances are such that the party cannot participate effectively in
the process without the presence of the lawyer, despite the guidance of the mediator, it may be in the party's best interests for his or her lawyer to attend the mediation session(s).

Any significant impediment to a party's ability to communicate, to understand, and to make informed decisions should be considered in deciding whether it would be appropriate for the party's lawyer to accompany the party to the mediation session(s). For example, mediation would be deemed inappropriate for a party who is drug or alcohol dependent and actively under the influence.

Because mediation is a voluntary process in which the parties take responsibility for and create their own solutions, parties are more likely to abide by the terms of any agreement reached. Thus, it is rarely necessary to take any action to enforce a mediated agreement. If and when it seems necessary, the lawyer assists the party in enforcing the terms of the agreement as well as any other written in the contract\textsuperscript{34}.

As a result, I could note that the relationship between lawyers as legal counsels and the parties is a relationship interactive and mutually assisted. Attorneys should play an effective and significant role so as to offer their services to the parties and solve the dispute situation or any other problems may arise.

\textsuperscript{34}Geetha R.,\textit{Role of attorneys in mediation process}, http://www.americanbar.org, P.3-7
MEDIATION IN GREECE AND GREEK MEDIATORS

In the following chapter I am going to deal with the mediation process in my country, Greece and what the Greek legislation orders about lawyers in mediation.

The Framework of Mediation in Greece

The Greek Law on mediation 3898/2010 has been voted by the Greek Parliament December 2010. It concerns civil and commercial disputes and it is intended to adapt our National Legislation to EU Mediation Directive 52/2008/EC. The above mentioned Greek Law applies to any mediation regarding civil and commercial disputes which take place in Greece regardless to whether a claim is a cross-border one or not. According to the Greek Law “Mediation is a structured process, whereby two or more parties attempt to resolve a dispute on a voluntary basis, with a view to reaching an agreement on the settlement of with the assistance of a mediator. The Greek Law on mediation also states that prior to the mediation process, the parties undertake in writing the obligation to respect the confidentiality of the procedure. The statements made or the information acquired during mediation proceedings cannot subsequently be used in court otherwise the mediation will be proved unsuccessful.

The agreement accruing out of a mediation process is called “agreement of settlement of the dispute” must be recorded and drafted by the assigned mediator. This settlement shall then be submitted to the Member Court of First Instance. Following this action the settlement agreement becomes an enforceable title and is secured even in case of only one of the parties wishing it to become one. On the contrary, the EU Directory provides that, in order for the agreement to become an enforceable title, the consent of both parties is in order.

According to the Greek Law, the presence of legal representatives whose main responsibility is to protect the rights of the two parties is mandatory during the mediation process. This comes in direct contract to the EU Directive, which does not enforce the presence of lawyers in the process. Finally, in Greece, the mediator fees
are divided equally between the parties, unless they have agreed otherwise, while each party bears the fees of his lawyer\textsuperscript{35}.

The Greek Mediator

According to the Greek Law, a mediator can be a third party who is asked to conduct mediation in an effective and impartial way regardless of the procedure by which she was appointed.

In national disputes the mediator can only be a lawyer accredited by the Greek Accreditation Committee. On the contrary, in cross-border disputes, according to directive 52/2008/EC, it is not obligatory for the mediator to be a lawyer. It has been suggested but not yet become effective, that in exceptional cases, where expertise knowledge is required, professionals that do not belong in the field of Law may act as mediators. While performing this role, the mediator may be subject to court regulations or various codes of ethics.

The Greek Accreditation Committee intends to draft a Code of Professional Conduct, which the mediators must respect and conform to.

I could just refer three examples of Greek mediators who also are lawyers:

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Nana Papadogeorgaki specializes in alternative dispute resolution; she is an Accredited Mediator (ADR Group, UK) and has completed the Harvard Negotiation Institute's Mediation Program (Harvard Law School)\(^{36}\).

As it was mentioned above, this requirement that those wishing to act as mediators in Greece (for domestic disputes) must also be lawyers (Article 4(c)) comes in contrast with the lack of such a requirement for mediators in cross-border disputes. It was to be expected of course, that this difference and would trigger lively discussions\(^{37}\). Even before the law was passed, there were complaints about this monopoly of lawyers in the domestic mediation arena. Some scholars were inclined to propose the recruitment of judiciary members\(^{38}\). Others tried to include notaries in the debate\(^{39}\). In addition, non-legal professionals have been suggested as mediator, at least for some cases of special nature,\(^{40}\) bearing in mind the widespread acceptance of psychologists and communication scientists in the field of family mediation around the globe\(^{41}\).

However, the choice made by the Greek legislature, was based on some solid arguments and anchored in domestic law. For instance, according to Article 46 of the Greek Lawyer statutes, when dealing with a dispute, a lawyer is ordered to demonstrate conciliatory skills;\(^{42}\) lawyers also possess, by definition, a vast amount of experience in managing situations of conflict through their litigation practice\(^{43}\). Nevertheless, even if lawyers are arguably the most suitable persons for assuming this task in Greece, such an absolute regulation as Article 4(c), causes alienating effects, as well as a form of very unequal treatment, in the professional market.

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\(^{36}\)Source: GMI-Greek Mediation Institute Synesis, Greek Mediators

\(^{37}\)Especially in the reading of the bill before the Parliament: An opinion in favour of the provision was advanced by Deputy Plevris, while an opposed position was advanced by Deputy Moulopoulos, Minutes of the Greek Parliament, Session of 9 December 2010, p. 2359

\(^{38}\)See Risos, ‘The institution of mediation – A modern challenge for dispute resolution’ (1 July – 1 August 2007) Δ.Α.Ε. &Ε.Π.Ε. [SA & LTD Companies Bulletin] p. 311 [in Greek], who supported the recruitment of retired and/or active magistrates. Emphasizing on the drawbacks of this proposal, by demonstrating the difference in the role of magistrates and mediators: Anthimos, ‘The coming of a ‘new’ institution: Mediation’ (2010) 64 Armenopoulos, p. 481 [in Greek]

\(^{39}\)Risos, ibid, p. 311; Anthimos, ibid, p. 482

\(^{40}\)Risos, ibid, p. 311; Anthimos, ibid, p. 482

\(^{41}\)For a brief elaboration of the counter-arguments, see Anthimos, ibid, p. 483

\(^{42}\)See in detail Kerameus,’The use of conciliation for dispute settlement’ (1980) StudiaJuridica I 64

\(^{43}\)Anthimos, ibid, p. 481
So, leaving aside the question of whether there was any objective to favor the lawyer’s profession, the most appropriate solution would be to approach the matter on equal grounds and allow the market to decide who is and who is not a capable mediator\footnote{See Anthimos A., (2012-2013) Handbook on Mediation, International Hellenic University, p.29}.

**What happening now and future opportunities**

The recognition of the importance of mediation in civil and commercial disputes and the consequential necessity to train mediators using targeted courses is a first step on the path of higher specialization and credibility of mediation in Greece as well as in other countries. The professionalization of mediators will lead to the solidification of a strong and qualified class of experts. This could create a snowball effect of continued positive changes in the field of mediation.

Mediation is now used in most areas of legal conflict, with excellent results. Early roundtables agreed that, due to variations in traditions, mediation programs are best developed locally, which is why each local jurisdiction may do things just a little differently from its neighbors. The theory reinforces the basic belief that, if given the chance, the people involved in a dispute are the best ones to decide how to resolve it.

In addition, the mediation services have great adaptability and considering about the future, we would be remiss to not consider the remarkable flexibility of the mediation process and our ability to adapt mediation to new contexts in new and creative ways. Meditative dispute resolution is about to take off in part because of the costs, delay and stresses of litigation; in part because of the risk and controversy over institutionalized arbitration; in part because of the empowering qualities of mediation (voluntary, complete decision-making, confidential procedure).

Mediation, as it was mentioned before, is a pretty much flexible, informal and cost effective process which can be arranged quickly and which aims to achieve a mutually acceptable or “win” settlement for both parties. So it will be of no surprise therefore that a large enough number of mediation cases globally, result in successful settlement. This makes the mediation a very successful and hopeful procedure, which
offers an alternative in regular litigation cases. This flexibility of mediation is so much important in the way that the whole process has a powerful impact on mediator's style and strategy. Simply put, the shorter the presumed available time for mediation to be accomplished, the more directive the mediator and mediation program tend to be (to get the job done). If we have more time, or think about mediation time in different ways (for example more capably using the internet), we may also find that we as mediators or more specifically as lawyers-mediators can become less directive and more facilitative in helping disputants lead their own problem-solving.

In this sense, as it was already mentioned the relationship between lawyers and mediation is a very complicated and fluid business. Despite its extra-law origins, in the modern sense mediation can to some extent be seen as the birth child of lawyers, brought into this world at the time of the Pound Conference in the 1070’s USA. Lawyers’ engagement with mediation and their attitudes, experiences and responses relative to the process, have since followed generally similar patterns in most jurisdictions across the common law and civil law divide. In a global sense many lawyers have moved from ignorance, suspicion and resistance to acceptance and embracement of mediation. Lawyer infiltration, domination and outright ‘capture’ of mediation markets have taken place in certain settings. Equally, it is true that many lawyers remain unconvinced of the merits of mediation either on principled or practical grounds. Both altruistic and selfish motives doubtless lie behind the lawyer intransigence that continues to exist towards mediation in all corners of the globe. Some of those cynical lawyers have nonetheless taken steps to accommodate mediation but in so doing have failed to cast aside their negative attitudes towards the process and remained wedded to traditional adversarial practice norms in their mediation activity. While, sadly most nations share a common trait of limited embedding of mediation within traditional legal education, current professional training for lawyers in mediation varies dramatically in different, jurisdictions. Specialized, professional mediation educational and training programmes range from short, practical courses, to sophisticated, rigorous programmes that blend theory and practice. The notion of mediation practice as a ‘bolt-on’ for lawyers remains strong, particularly in the common law world. This is reflected in the nature of much current training. Despite in the main being rather less well developed in terms of adoption of
mediation, the civil law world can generally be considered ahead of its common law counterparts in the depth of educational requirements set out for mediation practice⁴⁵.

CONCLUSIONS

Law and society scholar Stewart Macaulay once noted the important role that lawyers play in advancing legal reforms: ‘‘Lawyers’ own values and interests are reflected in the way in which they represent clients. As a result, reform laws which create individual rights are likely to have only symbolic effect unless incentives are devised to make their vindication in the long range interest of members of the bar. Moreover, an understanding of the many roles played by lawyers also requires a more expanded picture of practice...’’

Macaulay’s words are as relevant today as they were when they were first written 30 years ago, and seem in place also in the context of the role that attorneys need to play in order for mediation process to be successful.

It is undoubtedly a serious and not an easy task to define if lawyers are the most suitable or the only profession which deserves the title of ‘mediator’ or if their presence is totally necessary as counsels during the process. It has been shown that each proposal has both advantages and disadvantages. However the most proper solution should not focus on one particular direction. Instead, the birth of a new profession should be favored as the optimal solution. Any member of the professions that are candidates for involving with mediation could become a mediator, upon certain conditions, such as the most important one, passing a certain period of training in the mediation procedure. This is the pattern that several countries have opted for, e.g. Austria (Mediationgesetz), Greece and Germany seems to follow the same path. Whatever the general opinion in Greece or in other countries, the most appropriate solution should be to approach mediation not as yet another panacea for curing the ubiquitous shortcomings of the systems, but ideally as an institution with its own values and advantages. The aim should be to make use of it as a supplement to ‘classic’ dispute resolution, and most importantly, to do so in the areas where civil and commercial litigation have proved to be inefficient. The new face of Justice must be a more human and conciliatory one, so as to reach the desirable goal. Citizens and

46 Macaulay, supra note 144, at 115
47 See Hartung / Wendenburg: Die interprofessionelle Mediationskanzlei - Zusammenarbeit von Anwaltsmediatoren und nichtanwaltlichen Mediatoren, NJW 2009, p. 1551 et seq
48 This is the perception embedded in the directive, which was already recorded in the Commissions’ proposal, see COM (2004) 718, p. 4, under 1.1.4
49 Austria is the best example in this aspect: Despite the country’s very good record in the delivery of civil Justice, Austria was the pioneer in the EU space, passing a law on mediation already in 2003
lawyers alike must significantly restructure their dispute resolution mentality. Precisely this restructuring is the biggest challenge for the regional legal orders, and only time will tell if it possible and successful.

There is little doubt that mediation’s journey into the centre of formal disputing practices is likely to continue unabated in the near future in many jurisdictions globally. With mediation’s future across the globe seemingly secured as the process is increasingly embedding within civil court systems, it is more and more likely that lawyers will continue to being involved and dominate in this field. New non-traditional breeds of lawyers and emerging legal practice models may also comport better with mediation activity. Shifts in traditional legal markets coupled with increasing client awareness of, and receptivity to mediation may also stimulate growth. Amidst this burgeoning activity, the motives and actions of lawyers relative to mediation will continue to be subject to hard scrutiny. The storm over the lawyer’s interaction with mediation will doubtless continue unabated.

However, through exploring mutual interests, making appropriate concessions, listening and fostering mutual respect\textsuperscript{50}, lawyers and other candidate professions can together chart growth of the process for the benefit of all in society\textsuperscript{51}.

My final thoughts are that legal or any other profession is entitled to participate in mediation process as long as he/she acquires the appropriate skills and training. As concerns the highly disputed matter of lawyers’ monopoly in mediation I prefer to note that through proper regulating mediation practice and keeping away their selfish and altruistic instincts, they will contribute significantly to the evolution of this Alternative Dispute Resolution Model, ‘Mediation’.

\textsuperscript{50}“walking the talk”—Moffitt and Bordone(2005), p. 517.
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