



Managing feelings, making deals: The emotion work of Italian commercial mediators

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ALESSANDRA MINISSALE¹ 

Abstract

This article analyses the emotion work of commercial mediators, a category of legal professionals whose emotions have received scant attention in previous socio-legal research. To date, the law and emotion literature has extensively examined emotions in criminal proceedings, focusing particularly on the emotions of judges, jurors, prosecutors, and lawyers. Far less is known about emotions in commercial dispute resolution, where conflicts are often assumed to be governed by emotionless rational calculation. Drawing on observations of commercial mediations and interviews with commercial mediators in Italy, the article shows different dimensions of mediators' emotion work: navigating epistemic emotions, such as gut feelings and fear, managing professional identities, performing impartiality, and calibrating empathy. It further demonstrates how mediators instil feelings of hope and doubt in the parties to sustain engagement and loosen certainty. In this way, the article contributes to socio-legal scholarship on emotions in legal professions, dispute resolution, and economic conflicts.

Key words

Commercial mediation, epistemic emotions, emotion management, impartiality, hope, doubt, empathy

Resumen

Este artículo analiza el trabajo emocional de los mediadores mercantiles, una categoría de profesionales del derecho cuyas emociones han recibido escasa atención en investigaciones sociojurídicas anteriores. Hasta la fecha, la literatura sobre derecho y emociones ha examinado ampliamente las emociones en los procesos penales,

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¹ Alessandra Minissale. Postdoctoral Researcher, Department of Sociology, Uppsala University, Sweden, and IGSG-CNR, Bologna, Italy. Email: alessandra.minissale@uu.se ORCID: <https://orcid.org/0009-0004-8606-7448>

centrándose especialmente en las emociones de jueces, jurados, fiscales y abogados. Se sabe mucho menos sobre las emociones en la resolución de conflictos mercantiles, donde a menudo se da por sentado que los conflictos se rigen por un cálculo racional desprovisto de emociones. A partir de observaciones de mediaciones mercantiles y entrevistas con mediadores mercantiles de Italia, el artículo muestra diferentes dimensiones del trabajo emocional de los mediadores: trabajar con emociones epistémicas, como las corazonadas y el miedo; gestionar las identidades profesionales; actuar con imparcialidad; y dosificar la empatía. Además, demuestra cómo los mediadores infunden sentimientos de esperanza y duda en las partes para mantener su compromiso y atenuar la certeza. De este modo, el artículo contribuye a la investigación sociojurídica sobre las emociones en las profesiones jurídicas, la resolución de disputas y los conflictos económicos.

Palabras clave

Mediación comercial, emociones epistémicas, gestión de las emociones, imparcialidad, esperanza, duda, empatía

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1. Introduction

The ideal of emotionless rationality represents a cornerstone of legal practice across the legal professions (Maroney 2011). Against this backdrop, over the last three decades, interdisciplinary scholars have demonstrated that emotions permeate the work of legal professionals such as judges, prosecutors, magistrates, and lawyers, with a focus on their decision-making practices and interactions, primarily focusing on criminal cases (Roach Anleu and Mack 2021, Törnqvist and Wettergren 2023, Minissale and Bergman Blix 2025). Less is known about the emotions at play in other types of legal disputes, like commercial ones, where emotions are often assumed to be marginal due to the association of economic activity with emotionless rational calculation (Grillo 1991, Shipman *et al.* 2018). Building on the premise that emotions play a crucial role in all types of legal activities and legal conflicts (Mayer 2012), this article examines commercial mediation as a site of intensive and professionalized emotion work.

In recent years, mediation has moved to the forefront of international and European legislative agendas (Cominelli and Lucchiari 2017, Kłos 2023). Although there are differences in mediation models and styles (Zumeta 1998), we can broadly define mediation as the activity carried out by a third party who helps litigants manage a dispute without imposing any decisions on them. Mediators, like judges, must adhere to core legal principles of impartiality and neutrality (Astor 2007), referring respectively to the duty not to favour one party to the detriment of the other and to the absence of interest in the outcome of the procedure. While mediators are advised to remain unemotional to comply with said principles, they are also required to actively engage with litigants' emotions, eliciting emotional communication to facilitate dialogue and de-escalate conflict (Douglas and Coburn 2014, Kalter *et al.* 2021). Previous research has dwelled on this challenging task, highlighting that every "mediator must maintain professional boundaries with the parties and impartiality on the issues, but she can also strive to be fully present with her emotions, recognizing that her own reactions have value in guiding the mediation" (Schreier 2002, p. 101). The work of mediators thus captures an ongoing tension residing within the profession, that of combining emotional presence with emotional detachment, demanding ongoing management of emotion and emotional reflexivity (Gaffney 2022). This becomes particularly crucial in the context of commercial mediation, where little is known about the emotions of business litigants.

Drawing on an ethnographic study of commercial mediation in Italy, this article asks: (1) how emotions guide commercial mediators' decisions as to how to move the process forward (2) how commercial mediators manage their own emotions and actions in relation to their duties of impartiality and neutrality; and (3) how mediators manage commercial litigants' emotions.

Italian mediation has a relatively recent history, dating back to 2010, when civil/commercial mediation was first introduced to promote alternative dispute resolution procedures that could lighten the burden of ordinary justice. To date, for several types of commercial contracts —such as leasing, insurance, banking and financial contracts, franchising, networks, and supply— mediation is mandatory before starting a civil lawsuit. Italian mediation is an informal process with few rules concerning its confidentiality and the nature of the final agreement of an enforcement order. The parties must be accompanied by their lawyers but often choose to not participate delegating

their lawyers with full representative power. After the introductory speech, mediators can proceed with joint or separate sessions (i.e., caucus), at their own discretion or on the parties' requests.

In the following, I review the literature on emotions in mediation and on legal impartiality, followed by the conceptual framework guiding the analysis. This draws on the concepts of *epistemic emotions*—that is, emotions that have a direct knowledge-driving quality (de Sousa 2009)²—and *emotion management* (Hochschild 1983), understood as a process based on a *script* regulating mediators' *performances* (Goffman 1961, 1967) that include different forms of *capital* (Bourdieu 2002). After a description of the methods of the study, in the analysis, I show that mediators navigate and reflexively scrutinise gut feelings and fear as epistemic emotions that are relevant in their decision-making practices; they also engage in emotion work by managing distinct professional identities, performing impartiality, instilling feelings of hope and doubt in the parties, and calibrating empathy. In the concluding discussion, I return to the research questions and raise issues for future research.

2. Previous research on emotions in mediation and impartiality in the legal context

In their seminal work on negotiation, Fisher and Ury (1981) famously advocated separating people from problems, relegating emotions to a minor role in mediation practice. Subsequent studies have shifted away from this view, placing emotions at the centre of mediation scholarship (Schreier 2002). Shipman *et al.* (2018), for instance, emphasise that many commercial disputes involve strong feelings and mediators should acknowledge them as they may constitute the real issue underlying the conflict. The literature on mediators' best practices highlights the importance of recognising (Kalter *et al.* 2021) and labelling (Jameson *et al.* 2010) emotions to facilitate dialogue and mutual understanding between the parties, provided that emotions are subsequently translated into negotiable issues (Moore 2014). Douglas and Coburn (2014) emphasise the importance of encouraging emotional expressions among Australian mediators. Along these lines, building on role-played mediations including, among others, commercial disputes, Greco *et al.* (2024) observe that mediators' naming of emotions, either by reformulating directly or indirectly, is crucial to envisage a trajectory from negative to positive. Bush and Folger (2005) advise that before offering procedural solutions, mediators must first establish emotional resonance with the party, also referred to as mediators' empathy work (Irvine and Farrington 2017). This returns in De Girolamo's (2013) ethnographic study on commercial mediation in the UK, where the empathic work performed by mediators is seen as crucial to facilitating dialogue with and between the parties. This is particularly evident within the so-called transformative model of

² While some authors distinguish epistemic feelings from epistemic emotions, treating the former as "phenomenal experiences of which the subject is conscious" and the latter as "unconscious" and involving "sophisticated cognitive states" connected to inquiry and belief formation (Arango-Muñoz and Michaelian 2014, p. 98), this distinction remains contested. De Sousa (2009), for instance, blurs the distinction between epistemic feelings and epistemic emotions and Morton (2009) similarly centres his discussion on epistemic emotions, emphasising their role in directing attention, sustaining inquiry, and motivating knowledge-seeking rather than on distinguishing them conceptually from feelings. In the present article, I use the terms interchangeably.

mediation, which aims to foster empathy and recognition between disputants (Douglas and Coburn 2014). The facilitative mediation model also puts emotions at the core of the negotiation by encouraging mediators to focus on the parties' concerns, which include their fears and their hopes, as well as their substantive needs. Despite these scholarly suggestions pointing to emotions as a key factor for successful mediation, how mediators manage their own as well as disputants' emotions in practice, and how mediators work with emotions while complying with legal principles of impartiality and neutrality are questions still open to empirical investigation, especially in relation to commercial conflicts.

Because this article examines how mediators manage emotions while ensuring impartiality, previous studies on the emotional dimension of legal impartiality are of interest. Through these studies, we learn that, for legal professionals, emotion management is fundamental to show impartiality, as well as objectivity and independence. These legal requirements, conventionally understood as grounded in emotionless demeanour, are instead attained through emotion work. Impartiality (and objectivity) are "the touchstone[s]" for the reflexive monitoring of the myriad emotions that legal professionals experience (Roach Anleu and Mack 2021, p. 61). Hochschild's (1983) theoretical model of emotion management, defined as the effort to align felt and displayed emotions to sustain the organizationally desired emotional expectations, has been used by scholars interested in exploring emotional labour and emotional expressions associated with the legal system. These include the study of paralegals in England (Lively 2002), barristers in England and Wales (Harris 2002), lawyers in Sweden (Flower 2018), magistrates in Australia (Roach Anleu and Mack 2021), judges and prosecutors in Sweden (Bergman Blix and Wettergren 2018), in Italy (Minissale 2023), and the US (Scarduzio 2011, Maroney 2012, Snider *et al.* 2022, Nordquist 2025). These studies reveal that, to remain impartial, legal professionals use various strategies of emotion management, such as self-talk, adjournment, and debriefing with colleagues, family members and friends. Surface acting strategies (Hochschild 1983) include putting up a "poker-faced appearance" to present an emotionless display (Bergman Blix and Wettergren 2018, Roach Anleu and Mack 2021, p. 102) or using humour to mitigate tension and the seriousness of the situations at stake (Scarduzio 2011, p. 198). This body of research further points to the fact that management of emotions often goes unnoticed by legal professionals, and with repetition and training, these strategies eventually become habituated and backgrounded, therefore carried out without cognitive awareness (Bergman Blix 2015). Building on this scholarship, the present article explores the emotion work underpinning the performance of impartiality as a continuous and situated process, but shifts attention to a different occupation, that of mediators, who can also be seen as belonging to the legal professionals' group since they deal with legal matters, predominantly have a legal background and often work simultaneously as practicing lawyers (Raines *et al.* 2013, Cominelli and Lucchiari 2017).

3. Conceptual framework

The conceptual framework for the analysis draws on sociological concepts from emotion and interaction theory to explain how mediators work with emotions in their performances. Mediation is an interactional setting in which mediators continuously make decisions about how to move the process forward, for instance in relation to

whether and how to intervene, whether to separate the parties or proceed with joint session, to name a few. These decisions are not purely cognitive but rely on emotive-cognitive rationality. This article builds on a sociological understanding of emotion and reason as inseparable forces shaping all intellectual activities (Barbalet 1998). Emotions, particularly epistemic emotions (de Sousa 2009), such as doubt, interest, gut feelings and trust, are central to decision-making processes (Minissale 2024, Minissale and Bergman Blix 2025). We rely on epistemic feelings when they acquire, evaluate and negotiate knowledge, in our daily life as well as in professional settings (Törnqvist and Wettergren 2023). Gut feelings, for instance, signal intuitive knowledge about what is really at stake in a legal dispute, what the “true story” is about, and are relevant in the work of legal professionals evaluating legal narratives (Minissale 2024). Gut feelings can be understood as epistemic emotions because they determine salience and interest, “generating motivation for knowledge acquisition and revision” (Minissale 2024, p. 20).³

While epistemic emotions help explain how mediators interpret situations and make judgements, feeling rules illuminate the normative context within which these judgements are enacted. My interactional approach to the study of emotions in the context of commercial mediation emphasises the way emotions arise and are shaped by social norms. Drawing on Hochschild (1983), the analysis conceptualises mediation as a site governed by professional feeling rules—norms that “inform the sense of what is “proper” feeling in the performance and reading of emotional expression” (Scheer 2012, p. 216). In commercial mediation, it is possible to excavate implicit feeling rules for mediators, which privilege controlled emotionality, future-oriented pragmatism, and emotional understanding towards the parties. In this way, the relevant script (Goffman 1961) guiding mediators’ emotional performances demands emotional reserve as a symbol of impartiality and professionalism (Bergman Blix and Minissale 2025, p. 187), and emotional presence as a tool to establish trust and empathy with the parties. Here, the script refers to shared normative expectations about appropriate conduct in mediation, while performance denotes the situated enactment of these expectations in concrete interaction. In performing the script, mediators maintain concerns for their face, understood as the positive social value that they claim for themselves in interaction (Goffman 1967), particularly in encounters with lawyers, where criticism, correction, or reprimand may threaten professional standing and collegial relationships. While the script sets the ground rules for mediators’ interactions, it leaves room for individual adaptation (Bergman Blix and Minissale 2025); in the analysis, I highlight how emotional reflexivity (Holmes 2010)—the ongoing monitoring of one’s own and others’ emotions—together with epistemic emotions and status constraints, shape mediators’ ways of performing the script and interacting with the parties.

Status is further relevant for understanding mediators’ emotion work in relation to symbolic resources that can be mobilised strategically in interaction, what Bourdieu (1986) conceptualises as different forms of capital. Mediators’ professional status may function as a form of legal capital that can be strategically employed to maneuver the mediation process in different directions, for example directing the parties’ attention to

³ In the literature, gut feelings are often discussed through related notions such as a “hunch,” defined as “a vague, not yet clearly formed idea or belief about something” (Terpe 2016, p. 5), or a “feeling of knowing” (Arango-Muñoz 2014, p. 204). In more colloquial terms, “gut feeling” may be used as an umbrella expression for a range of intuitive sensations (cf. Hedenus and Backman 2020).

weak legal aspects of the conflict. Additionally, emotions themselves may operate as a form of emotional capital (Nordquist and Bergman Blix 2022), which includes “emotion-based knowledge, emotion management skills, and feeling capacities” (Cottingham 2016, p. 454) as resources that mediators can mobilize to influence the interaction and manage disputants’ emotions.

In fact, as in many other occupations, mediators’ emotion work is both intrapersonal and interpersonal (see also Bergman Blix and Minissale 2025) as they manage their own emotions while simultaneously attempting to regulate litigants’ feelings, such as fear, anger, and hope, which are central to conflict. Following Wettergren (2025) and Kemper (2011), fear is understood as an emotion usually arising in situations where actors perceive themselves as powerless and as having limited agency in relation to a potential threat. Depending on attribution of responsibility, “fear can transform into anger through the ascription of guilt” (Kleres and Wettergren 2017, p. 509). Fear is a key emotion in conflictual situations like those analysed in the current article, where litigants fear negative consequences for their professional as well as private lives, and thus fear a negative outcome of the mediation. Anger, by contrast, emerges through the attribution of responsibility for the conflict to the opposing party. Building on sociological theorizing on emotions and social action (Barbalet 1998), hope is understood as a future-oriented emotion that enables actors to remain engaged despite uncertainty and disagreement (Wettergren 2025). While fear may inhibit action and anger may escalate conflict, hope motivates litigants to maintain dialogue and continue investing in the possibility of a positive outcome. In the analysis, I examine how mediators seek to instil hope as an emotion of future possibility for the disputants in a present that is perceived as uncertain and unsatisfactory (Wettergren 2025, p. 135). I also focus on doubt as an epistemic emotion (Törnqvist and Wettergren 2023) that mediators seek to instil in the parties to unsettle their certainty and to encourage them to reconsider their hostile positions. While hope sustains engagement with the mediation process, doubt opens space for reflection and change by prompting litigants to reassess rigid positions and expectations. Analysing mediators’ emotion work through the lens of hope and doubt provides a better understanding of how they manage litigants’ emotions to guide the interaction and create a sense of progress and improvement.

Finally, I include a focus on empathy as a relevant emotional dynamic in mediation (Irvine and Farrington 2017). Empathy is understood as the capacity to attune to other people’s emotions, thoughts and beliefs, by imagining how they experience the world (Del Mar 2017). Because mediators are expected to appear neutral and impartial while also conveying an empathic understanding of disputants’ emotions, I use the analytical concept of *calibrated empathy* to describe an emotionally attuned stance that must be credible but carefully constrained to avoid perceptions of partiality.

4. Methods

This article uses data collected in Italy from July 2024 to April 2025, as part of the project *Justice Outside the Court: An Ethnography of Emotions in Commercial Mediation (2024-2027)*, funded by The Swedish Research Council (2023-06542_VR).⁴

Fieldwork occurred at three Italian mediation organizations: O1, a private mediation centre attached to a Chamber of Commerce; O2, the mediation centre of a Bar Association; and O3, a private mediation centre. After negotiating access with the heads of said organisations, I recruited mediators interested in participating in the research and together we selected suitable mediations for observation. These mostly included disputes relating to supply contracts, contracts for services, business lease agreements, and agency agreements. In total, I followed 38 mediations (36 over Zoom and 2 in person) and interviewed 24 mediators, the majority of whom had a legal background and were practising lawyers, while one had a background in economics and worked as an accountant.

On average, each mediation consisted of two meetings, each lasting approximately two hours. The total time spent on observations reached about 82 hours. At the beginning of each mediation, mediators informed litigants about my presence and obtained consent. To avoid interfering in the interactions between disputants and mediators, I opted for passive observations by turning off my camera during online meetings or sitting in the corner of the room when in person, remaining silent. I signed confidentiality agreements at the end of each observation.

Observations focused on emotional expressions, emotion words, emotional turning points in the interaction between disputants and among them and mediators, with attention to tone of voice, pitch and body language. When observing remote mediations on Zoom, I kept a gallery-style configuration on a single flat screen. I chose not to use speaker view so as not to lose sight of participants' reactions to the speaker's actions. Disputants and their lawyers joined the mediation from different locations, some in front of a neutral background in their home or offices, others in their cars or walking from one venue to another. Mediators mostly sat in their offices and kept a blurred background. At times, disputants and their lawyers maintained only their neck and head in view, while others sat more distant from the camera, allowing a view of their torso and arms, which was the ideal angle allowing me to see gestures and postures (Rossner *et al.* 2021).

The predominance of online mediations in the dataset raises important methodological considerations. Previous socio-legal scholarship has shown that digital participation can reshape interaction by altering access to non-verbal cues, eye contact, bodily communication, and the sense of co-presence that characterises face-to-face encounters (Bandes and Feigenson 2020, Rossner *et al.* 2021, Flower 2023, McKay and Macintosh 2024). These dynamics may influence not only how emotions are expressed and managed by disputants and mediators, but also how they are observed by researchers. While online observations limited access to certain embodied cues, such as eye contact,

⁴ This research has been ethically approved by the Swedish Ethical Authority (Beslut 2024-01968- 01-573867 Etikprövningsmyndigheten), by the Research Ethics and Integrity Committee of the National Research Council of Italy (Prot. N. 0200240, 11/06/2014 – UOR: SI000002), and by CUREC-University of Oxford (2765877).

subtle bodily movements, and interactions occurring outside the camera frame, they also provided enhanced visibility of facial expressions and participants' immediate environments. Drawing on methodological discussions on digital qualitative research (Hine 2005, Minissale and Nordquist, forthcoming),⁵ to compensate for the reduced access to embodied interaction, I paid particular attention to vocal cues, pacing, silences, emotional language, and moments of interactional disruptions. I also treated my own emotional responses as supplementary analytical resources (Bergman Blix 2009), while follow-up interviews with mediators provided opportunities to explore how participants themselves interpreted emotionally salient moments.

More specifically, through follow-up, semi-structured interviews with mediators, I gained access to discourses of emotion, exploring how mediators described and made sense of the interaction occurring during previous mediations and of their own emotional experiences (Flam and Kleres 2015), validating my interpretations of observed behaviour (Minissale 2023). I included questions about expectations on the case, preparations, reason to become a mediator, and more specific questions tied to aspects noticed during prior observations. Interviews were then transcribed verbatim.

I anonymised interviews during transcription and observation notes while taking fieldnotes, replacing real with fictitious names and omitting information about the dispute that could enable identifying people or their companies. In a first exploratory round of reading and open, manual coding, I identified and labelled recurring themes in the material. This initial stage served to generate preliminary inductive categories, such as those relating to hope, doubt, and fear. In a second stage, I developed a more systematic coding scheme that combined inductive themes with deductive codes relating to the theoretical frame of emotion theory and previous research on mediation practices, such as those related to empathy and impartiality (Alvesson and Sköldberg 2009). I then imported all data to the software *NVivo* and coded, extracting segments from field notes and interviews for more detailed analysis. The interpretation focused on a more theoretically informed analysis in order to answer the research questions. For this article, I paid attention to the main patterns concerning the emotions of mediators and their emotion management practices.

In the following analysis, I utilise a selection of cases illustrating the range of emotional dynamics relevant to the research questions. Words/sentences presented in capital letters indicate higher pitch.

5. To mediate “feelingly”

The following empirical sections address the research questions outlined in the introduction by showing that mediators are guided by epistemic emotions of gut feeling and fear when deciding how to interact with the parties and move the process forward (RQ1); the analysis further lingers on mediators' emotion work to comply with principles of impartiality and neutrality (RQ2) and in relation to how to organise the sessions (RQ3), and shows that by instilling hope and doubt, and by using calibrated empathy and humour, mediators try to facilitate conflict resolution (RQ3).

⁵ Minissale, A. and Nordquist, C., *Studying emotions in the digital space: Challenges and opportunities of remote fieldwork*. Paper under review.

5.1. Navigating gut feelings and fears

When listening to stories told by disputants and lawyers, mediators often express gut feelings verbalised as sensations or intuitions, and here conceptualised as epistemic emotions signalling what really matters to the parties (see also Minissale 2024). This is exemplified in the following excerpt from an interview with mediator Luna. The case is a dispute between a homeowner and a construction company over renovation work. The homeowner insisted that the company should have built a wall in a specific way, claiming that this was necessary for safety reasons, while the company contested the request, arguing that by building the wall in the way demanded by party, they would have violated specific rules in force in the building. When reflecting on the interaction, mediator Luna explains how she tried to move beyond the stated position to identify the homeowner's actual desires:

Luna: I have the idea that... The party wants to build this wall in this way [...] not for a matter of security or safety. The mediator has to identify the actual need that the party wants to satisfy. And I am not sure it is a need of security like the party said. That's why I asked her: 'Could there be another way to guarantee your security?' I suspect that she wants to build the wall to have another room. I asked her: 'But excuse me, could there be another way to do these renovations and guarantee your security without a wall?'

In the quote, Luna manifests a gut feeling about the party's real wants. Gut feelings are often employed as cues indicating that further knowledge is needed, or that something "hidden" about the story has to be found out (Minissale 2024). Here, while expressing her intuition, Luna links it to specific questions asked to the party during the mediation. In this way, we see how her gut feeling fosters the quest for knowledge and truth. During the mediation, mediators make decisions about whether and how to intervene in the unfolding interaction. Gut feelings inform moment-to-moment judgements about asking sensitive questions, pursuing underlying issues, or refraining from emotional exploration. This expands De Girolamo's findings (2013) regarding the role of intuition in relation to how mediators decide to deal with cases.

Mediators do not always act on their gut feelings about the real intentions and needs of commercial disputants. Such enquiries are often perceived as dangerous because they may increase conflict instead of de-escalating it. This is visible in the following case with mediator Michele in a dispute concerning the dissolution of a company whose partners are also siblings:

Interviewer: would you like to ask any questions about the death of their father?

Mediator Michele: That would be the real issue here, if there was a glimmer of hope. Working on those things, because that's where you can really change a lot in their relationship. But here, I have the feeling that if you try to pursue this line of argument, the lawyers would immediately look at you like, 'Where the hell are you going with this, get back to the objective facts'. That would be the lawyers' gaze. And I would lose THEM (the parties), they'll get even more pissed off. I have this feeling. At least at this stage, I have this feeling.

Mediator Michele's account brings to the fore emotional reflexivity (Holmes 2010)—the monitoring one's own and others' emotions—in the form of a reflexive scrutinization of the gut feeling when he verbalises the potential risks of acting upon his intuition. Michele perceives that the real issue in this case concerns unresolved emotional

dynamics linked to family loss, yet he chooses not to follow his intuition due to fear of hostile reactions from both the lawyers and the parties. His decision to refrain shows how the feeling of subtle fear (“I have the feeling that if you try to pursue this line...”) functions as an emotional alert that guides mediators in what they perceive as the appropriate management of their emotions. Previous conceptualisations of fear point to its epistemic function as an instinctive measure of risk (de Sousa 2009). Here we see how two epistemic feelings, namely gut feeling and fear, which are both deeply instinctive in their nature, are intertwined and reflexively calibrated to decide what is the most appropriate course of action to pursue.

In sum, the examples of Luna and Michele bring to the fore an ambivalence in the managing of gut feelings—between moving closer to truth while risking escalation, or keeping intuitions at bay due to a prevailing emotion of fear of risk. This underscores not just the variety of epistemic emotions at play in mediators’ work, but also the fact that managing emotions in mediation is a socially attuned judgement. Mediators calibrate their emotions in light of the situation, the interaction, and the perceived or anticipated emotions of the parties.

Remaining on fear, my analysis reveals that fear is an epistemic emotion with many nuances in mediators’ work. I recognised both fear of escalating conflict and fear of compromising collegiality and losing impartiality, especially because most mediators were also practicing lawyers. In these situations, mediators must navigate overlapping professional identities, shared status, and the risk of reputational damage. Mediator Monica, for instance, who is also a practicing lawyer, during an interview reflects on her fear of reprimanding both an unprepared lawyer and an aggressive one:

Interviewer: the lawyer today seemed a bit aggressive, at one point she shouted, remember?

Mediator Monica: To tell you the truth, you know you always have to be impartial. And at that moment, I was more on the other side, in the sense that we are in mediation, you can’t make those requests to me, about legal fees, about biological damage. You have to make your client understand that too... She [the lawyer] KNOWS these things.

Interviewer: Then, the other lawyer shouted at her, and said: ‘Who is ignorant of the law?’

Mediator Monica: I didn’t even hear that, and thank goodness I didn’t hear it, to tell you the truth, because I wouldn’t have known what to say. I would have found myself in an awkward position, because what do I do, reprimand the lawyers? Should I say: ‘Excuse me, lawyer, don’t you dare, you can’t say certain things’? In general, the problem is... is that it’s difficult because they’re your colleagues. They’re lawyers, you know them [...] you never know how far you can reprimand them. My colleague can say to me, ‘I’m a lawyer like you, why on earth are you reprimanding me’? So, at that moment, you have that FEAR. And you find it a bit difficult to call them to order. You FEEL that they are colleagues anyway, and they KNOW that you are a colleague from the same bar, and so WE ARE EQUALS, it’s not because I’m a mediator that I have something extra.

This excerpt from the interview opens by highlighting Monica’s awareness of the difficulty of keeping legal judgements under control, without taking sides. The fact that mediator Monica is also a lawyer generates expectations about what other lawyers should “KNOW” and should not do during mediations. The continuation shows more

clearly how shared professional status is difficult to navigate emotionally. Here we see that subtle fear is linked to concerns for face-threatening acts among peers and to the emotional costs of asserting authority. Fear guides mediator Monica's emotion management as she chooses to refrain from emotional intervention. Impartiality is here intertwined with collegial respect and mutual recognition, a theme that I will explore further in the next section, where I dwell on mediators' emotion work resulting from their double professional identities.

In sum, this section has shown that mediators' decisions as to how to move the process forward are informed by epistemic emotions both towards the parties and their lawyers. These emotions are calibrated and reflexively scrutinised to pursue what mediators perceive as the appropriate course of action.

5.2. Managing professional identities: Suspending or showing legal judgement

Having a double professional identity as mediator and practicing lawyer can generate different emotional reactions, with mediators perceiving their legal background either as something to keep at bay or to employ. This section examines how mediators work emotionally and interactionally to remain impartial while relying on or resisting the pull of legal evaluation. These contrasting practices reveal that the script of impartiality is an ongoing and reflexive achievement, situationally adapted by mediators depending on their understanding of the role (see also Bergman Blix and Minissale 2025).

For some mediators, it was important to resist the impulse of legal judgement, avoiding acting like a judge by establishing who is right or wrong in the mediation or who may have a better chance to win a civil lawsuit. Some mediators showed awareness of their legal judgements and the difficulty of keeping them at bay, like exemplified by Sofia in the following excerpt from an interview:

Mediator Sofia: It's really difficult when you, in a certain sense, judge, because it's true, I honestly judged today. Because in my opinion he [the lawyer] was saying [...] I... in fact, in all sincerity... I judged, in the sense that in my opinion he was REALLY grasping at straws. But I couldn't let him SEE this, or show this, so I said: 'OKAY, SOFIA, try in every way to understand how things are'. And so, I tried, in the private meeting, not so much to make him understand that he was saying something that in my opinion made no sense, but to really try to get to the heart of the problem.

Sofia's account illustrates the tension between legal evaluation and the expectation of impartiality. When she states that she "honestly judged" the lawyer and believed he was "really grasping at straws", she reveals the internal assessment she formed about the weakness of the legal argument. At the same time, by emphasising that she "couldn't let him see this", she displays awareness that her legal judgement should not be visible in interaction. By referring implicitly to impartiality and reflecting on the difficulties of enacting the principle in real practice, Sofia underscores emotional reflexivity in action. In the quote, she recounts a common strategy of using caucus to investigate legally unsound positions only with the lawyer representing the party who is considered to be in the wrong. This strategy arguably serves to protect perceptions of impartiality by removing the other party from the interaction and reasoning only with the party believed to be legally weak.

Another recurrent strategy to suspend legal judgement is spatial and symbolic separation from the lawyer identity. Several mediators chose to conduct online mediations from the offices of the mediation organisations rather than their law firms, describing this as a way to feel calmer and more focused on mediation rather than advocacy. For instance, mediator Eleonora, who is also an active lawyer, explains this preference because “It gives me the idea of better separating my activities and there is also the secretary who can help me with any need, I feel more at peace this way”. Spatial and symbolic distancing can be understood as a form of emotion work. “Emotional distancing” is described in the literature as a self-controlled protective strategy of maintaining emotional separation in order to preserve neutrality in professional practice (Kim *et al.* 2020). Mediators’ relocation from their law firms to mediation venues likewise serves to sustain an impartial stance. In this context, however, distancing is not aimed at preventing excessive emotional identification with vulnerable clients (see also Kim *et al.* 2020) but at bracketing the legal-advocacy self to inhibit legal judgement and support an emotional state more compatible with mediation.

Another widely discussed strategy was the deliberate avoidance of reading case documents in advance. As mediator Dario explained during a follow-up interview:

Mediator Dario: I... never read anything, because every time I did it, I got an idea about the legal matters, and I felt this as an obstacle. In this mediation, if I had read, I would have fallen in the trap of [...] how to say, the LEGAL CONTENT, and I would have asked more questions about how things have happened. This, how to say [...] pushes the mediator to act a bit like the judge.

Dario frames document avoidance as a way to protect emotional openness and resist the pull of legal reasoning, explicitly contrasting his practice with judges’ work in adversarial proceedings, where reading the file in advance risks shaping expectations about facts and parties in ways that compromise experiential openness in the hearing. Other mediators framed the question in less absolute terms. Valerio, for instance, articulates a more moderate version of distancing, in which limited preparation balances emotional openness with professional responsibility. The following quote from a follow up interview illustrates how impartiality is calibrated rather than absolute.

Mediator Valerio: I don’t like consulting with the lawyers of the parties before mediation, because I make up my story, then...

Interviewer: Other mediators in this organisation told me that they must do it.

Mediator Valerio: Yes, but you can just consult them to verify power of attorney, stuff like that. I don’t want to get into the merits of the matter. I don’t want to be completely blank, OF COURSE. Here I looked at the business lease agreement, because I need to know what we’re talking about.

Here we see also how organizational rules, which impose specific practices and procedures, are interpreted and acted upon in different ways, to achieve what one perceives as the correct way of acting that balances the need of acquiring knowledge about the case with the duty of preserving an impartial demeanour.

By contrast, other mediators explicitly framed advance preparation as a professional duty, arguing that forming a legal assessment could be strategically useful to guide the parties, like explained by mediator Marco:

Mediator Marco: Another thing I do a lot, before arriving here, is to document myself, as far as possible, based on the few things they often produce, I try to dig deeper. Thankfully, there are companies and therefore company registries, and you can learn a lot from them. Normally you don't understand anything, but in this case, you could understand a LOT about WHO should have been there and wasn't.

Interviewer: Is this your practice, to study, within the limits of what you can do?

Mediator Marco: Within the limits of what I can do, it's not only my practice, but I feel it's my duty, in fact, to gain knowledge about the facts, within the limits of what I can do, and IF the facts allow me to, to get an idea of who... why... in this world [Name], there's always someone who's more right than the other, and one of things that I do is, in short, to let [...] well [...] to make the parties understand that one is more right than the other.

This excerpt demonstrates a contrasting approach in which legal knowledge and legal status are employed as a source of capital to gain energy and exert greater leverage in the interaction. That is, mediator Marco treats legal assessment as a strategic emotional resource—bolstering his sense of authority and confidence to shape how parties feel about who is “more right”, whilst remaining aware of the risk to lose impartiality by acting in this way. In fact, later in the interview, he explained that “not everyone does” this and “many advise against it”, but for him “highlighting the shortcomings of their legal positions has been successful and can be an advantage”. While he acknowledges that “You can also annoy the lawyer at times”, Marco clarifies that he tries “to do it on tiptoe, eh... always giving the lawyers credit for the legal shortcomings that I already knew about”. This exemplifies how mediators like Marco are emotionally reflexive while using legal capital: they monitor the potential irritation or defensiveness of lawyers, carefully modulate the tone and timing of their legal assessments, and continuously gauge whether such interventions might undermine perceptions of impartiality or instead enhance their authority and effectiveness in guiding the parties.

5.3. Performing impartiality: Managing antipathies and pressures from the parties

Showing impartiality does not just entail managing legal judgements, but also feelings of antipathy towards the parties or their lawyers, as recounted by Mediator Luna:

Mediator Luna: The lawyer... Um... unfortunately, right now... I REALLY dislike her [annoyed tone of voice].

Interviewer: Did you already know her?

Mediator Luna: Nooo, well... it's really hard work. Also, because, I don't know how much of a difference it makes, but I have to work on myself to be kind and patient when I just want to say, 'Shut up, you're talking a load of RUBBISH that's impossible to listen to. Instead, I have to say, 'No, lawyer, I understand your point of view [pretending a polite tone of voice]'. You just wish there was a button to make her disappear...

The excerpt illustrates how Luna manages antipathy by performing politeness. As mentioned earlier, the relevant script for mediators requires impartiality performed through a calibrated emotional stance, where neither sympathy nor antipathy are admitted. To perform this script, mediators need to engage in surface acting (Hochschild 1983), by managing what they interpret as problematic emotions that could threaten perceptions of impartiality from the parties. This shows that, in mediators' work, the

embodied expression of emotions adapts to the performative demands of a script, “understanding when to enlarge some aspects or hide others” (Bergman Blix and Minissale 2025, p. 183).

Managing one’s own emotions, however, is only part of performing impartiality. Mediators are frequently pressured by parties and lawyers to act as messengers or advocates of their demands. Managing these pressures requires emotional boundary work as mediators strive to acknowledge emotions, beliefs, and demands more broadly, without taking sides. For instance, in a dispute over monetary compensation in a lease contract, during the caucus, a lawyer asked mediator Enrico to “anticipate the request of his client to the other party”, to which Enrico responded, “it has to come from your client’s mouth, I don’t want to make mistakes or anticipate anything”. By asking mediators to act as messengers of their requests, litigants seek to claim more authority and thus have increased chances of success. This was clearly stated by a lawyer in the caucus of a mediation lead by mediator Michele:

[Breakout room]

Lawyer: I’d prefer if you talk and say what we want, because the opponent’s voice is always perceived as more hostile than that of the mediator.

Mediator Michele: I will make a preface, but it’s worse if they perceive that I am taking your side

Lawyer: Now, we are trying to be calm and cold, to keep this mediation in place. And my client too, is really making a huge effort to remain patient and not explode. They have shuffled the cards at the last minute, pulling out a forensic expertise that cannot be used. We ask the mediator to point this out, also because we will then bring up the flat rate of £50,000 for the furniture, and this means blowing up the deal. So, we ask you, mediator, if you see any room for negotiation with regard to a twist that seems more designed to blow up the deal than anything else.

Mediator Michele: Well, you know that this is not my job but yours, but I understand the confusion caused by the latest updates. We need to, how shall I put it, manage the distance and understand how to do so.

The lawyer attempts to mobilise the mediator’s symbolic capital (Bourdieu 2002) and relational authority by asking him to voice their demands, arguing that “the opponent’s voice is always perceived as more hostile than that of the mediator”. The mediator’s response shows careful emotional boundary work. Rather than simply refusing, he empathically acknowledges the strain described by the lawyer (“I understand the confusion caused by the latest updates”) while simultaneously reaffirming role boundaries (“this is not my job but yours”). This dual move allows him to validate emotions (i.e., emotion recognition, see also Kalter *et al.* 2021) without becoming aligned with the party’s narrative or demands (i.e., impartiality).

5.4. Organising mediation sessions: Emotional intensity vs emotional containment

The decision to separate the parties (i.e., caucus) reflects different models of emotion management. Organisational training plays a key role in shaping these practices, producing patterned emotion-management approaches. During my fieldwork, I observed that mediators trained at O1 generally favoured extended joint sessions and used caucus sparingly. This approach reflects an emotion-management model based on

valuing emotional expressions and emotional intensity as a precondition for emotional attuning and collaborative decision-making. Rather than shielding parties from confrontation, mediators seek to sustain joint interaction hoping that this may allow the parties to reconnect once the emotions have been ventilated. Mediator Sofia from O1 recounts her preference for joint sessions where emotional intensity is valued to foster mutual recognition.

Mediator Sofia: separate meetings definitely help everyone to relax, because for many mediators... well, first of all. Sitting at a table [slower pace] with both parties is not easy. Because you have to keep everything under control, you have to keep the parties under control, their reactions, you always have to be fair, equidistant and impartial, addressing both parties equally, and always conducting the exchange in a very BALANCED manner. With private meetings, it is actually a time when both the mediator and the parties can take a breath. And so, as I see it, there are times when, either because of emotions or because there are situations that are a bit unusual, a bit delicate.

Mediator Sofia describes caucus as a moment of relief for both mediators and parties, acknowledging its calming effects while framing it as exceptional and situational rather than routine. This partly rhymes with the findings of Douglas and Coburn (2014, p. 136), where mediators saw caucus not as a method of avoiding emotional confrontation but “as an opportunity for parties to find some privacy or take some reflection time”. Sofia’s account further highlights the emotional demands placed on mediators during joint sessions, including constant vigilance, emotion management, and the performance of impartiality.

Remaining within O1, mediator Dario explicitly links the preference for joint sessions to a normative commitment to the parties’ autonomy and responsibility:

Mediator Dario: What the training programme tries to instil is to try to work together with the parties as much as possible. I... let’s say... I use a mediation model that is based on always working with the parties together and never holding separate meetings. Even in situations where there is conflict, because that way they have the opportunity to find a way to talk to each other, because that’s the issue, isn’t it? It’s really about being able to work and collaborate together, because the logic is to put the responsibility for deciding COMPLETELY in their hands.

Mediator Dario’s refusal of separate meetings, even in high-conflict situations, reflects a belief that emotional expression and emotional intensity are necessary for the parties to “find a way to talk to each other.” Hostile emotions that are common in conflictual situations, such as anger, distrust, frustration or outrage, are not treated as disturbances to be dampened but as a resource that can be mobilised in interaction so that grievances become clear and negotiable. Emotional intensity therefore acquires value because it provides information and creates opportunities for recognition and attunement between the parties. In this sense, emotions function as a form of emotional capital (Nordquist and Bergman Blix 2022), a resource that mediators may employ to facilitate understanding, cooperation, mutual recognition and problem-solving.

By contract, mediators at O2 consistently favoured early separation of the parties. Some mediators, like Eleonora, depicted immediate separation as necessary because “the presence of the other party can cause embarrassment, fear, and doubt.” Caucus is framed

as a protective measure aimed at reducing emotional risks. Joint sessions, instead, are seen as “dangerous”, like recounted by mediator Barbara:

Interviewer: Why did you start with separate meetings right away?

Mediator Barbara: Well, because that's how I work. I mean, I do the first part, keeping it as short as possible, saying the essential things, it is very useful to understand immediately what both parties' points of view are. Then in the separate meetings, it's the only time when the parties can tell me what they think calmly, in CONFIDENTIALITY, because they are CALM that the others are not there, cannot hear and have no problems.

Interviewer: Okay. Interesting, because other mediators start with a joint presentation and then separate afterwards.

Mediator Barbara: For me, that's very dangerous, because it immediately opens up CONFLICT in that case, because if one person says something slightly different from what I think is the reality, the mediation is already over.

Here, caucus is seen as a protected emotional space, as Barbara reveals by putting emphasis on “confidentiality” and “calm”. In her view, caucus has to be the rule because parties can speak without fear of reaction. This approach reflects a model of emotion management centred on containment and prevention, in which strong emotions are treated as a primary risk to avoid. From this perspective, a narration of the dispute in front of the opposite party is seen as potentially reactivating hostile emotions, which are inherently dangerous because they can fuel conflict. Control over emotional flow is prioritised over direct emotional exchange, as exemplified by mediator Carlo:

Interviewer: In fact, that was my question, because at the beginning you said you wanted to separate them immediately, and then you didn't.

Mediator Carlo: The risk [of joint sessions] is that they expect to have to give an overview of what brought them here. I tend to reduce it A LOT, because that's an element of conflict. So, I tried to say, do it very, very succinctly, don't focus too much on the past, but let's understand what it is so we can work on the future. When I sense tension right away, I don't let them talk at all, I say 'now I need to hear your reasons separately, then there will be time to discuss' I believe that separating them is quite fundamental. Either you are very good at making them perceive a new dynamic, a new perspective, right away, or they arrive with their own perspectives: if you make them repeat the same old story for a long time, without stopping them or seeing that there are spaces, you are making them relive the conflict and therefore they do not want to move forward.

Mediator Carlo expresses a clear preference for early separation. His concern that allowing parties to repeat “the same old story” will make them “relive the conflict” reveals an understanding of hostile emotion as counterproductive to re-conciliation. Previous research has, instead, shown that hostile emotions can involve an aim to achieve recognition of harms done (Silva 2024, p. 387; Minissale forthcoming), which “generates emotional energy to manage upcoming problems or situations” (Bergman Blix and Törnqvist 2025). That is, expressions of hostile emotions can, in the long run, facilitate a mutual understanding of emotional needs. Elsewhere, I have shown how expression of distrust and moral outrage in commercial mediation manifest a need for empathy and status recognition (Minissale forthcoming). By referencing to this literature, I do not intend to suggest that joint sessions are necessarily good, but rather

to offer an alternative view where hostile emotions that are normally considered “negative” and to be avoided at all costs can instead be seen as a form of emotional capital (Nordqvist and Bergman Blix 2022) that is conducive to mediators’ goals. At the same time, hostile emotions can also cement disagreement or lead to aggression, especially when they are not acknowledged, are met with counter-attack, or unfold in contexts characterized by strong power asymmetries; the challenge for mediators is to discern when such emotions can be safely and productively channelled, and when containment – for instance through caucus – is required to prevent further polarization. Arguably, caucus is also a space of emotional safety for mediators, who are less at risk of being perceived as partial when expressing empathy towards one party.

5.5. Instilling hope and doubt

In this section, I show that mediators’ management of the interaction is characterized by a delicate balance between instilling a feeling of hope in future improvement to motivate disputants to remain engaged in the mediation, and of doubt to prompt a reassessment of hostile positions. A first way through which mediators instil hope is by reframing interactional progress, as visible in the following excerpt from an observation with mediator Michele:

Mediator Michele: It is tangible that you are taking many steps forward, even if you don’t see them. You can’t rebuild relationships that have been broken in one hour. But reading through this jungle of grievances and deteriorated relationships over time, you have taken steps forward: you have clarified things and told each other things you hadn’t said before.

In the quote, Michele seeks to instil hope in the parties by constructing a narrative of progress where the mediation is framed as already producing meaningful change, thereby legitimising continued engagement. By validating the difficulty of relational repair and situating it within a longer temporal horizon, the mediator seeks to reduce pressure for immediate resolution while sustaining hope that the process is moving in the right direction. As observed by Greco *et al.* (2024, 16) in their study on role-played mediations, “an emotional orientation of hope” is central to successful mediation. The feeling of hope in mediation, however, is inherently precarious and must be protected from disappointment. Mediators often work to normalise uncertainty by preparing parties for the possibility of setbacks, which should not be seen as failure, like exemplified by mediator Raffaella in the following excerpt from an observation:

Mediator Raffaella: Let’s hope that the proposal is accepted, but let’s not get discouraged if it isn’t, because we are still on the same wavelength towards an agreement. So, let’s not lose confidence if we don’t close immediately [calm, reassuring tone].

Here, hope is decoupled from immediate success and relocated in the continuity of dialogue and shared alignment. Notably, Raffaella labels emotions explicitly by mentioning confidence, in a calm and reassuring tone. The parties, who had previously appeared visibly tense and exchanged only brief responses, responded with nods and remained engaged in the discussion rather than withdrawing from the negotiation. The process of instilling hope was thus accompanied by observable shifts in the interaction itself.

Mediators further try to mobilise hope by explicitly signalling the likelihood of agreement, like in the following intervention of mediator Barbara after caucus:

Mediator Barbara: The points are not far apart, I see the possibility of an agreement [smiles, leaning towards the camera] ... now that you have both verified your economic situation, the claimant is willing to accept a lower amount than initially requested.

With this intervention, the mediator seeks to instil hope while redirecting the interaction toward concrete negotiation and pragmatic solutions. As she conveyed this message, Barbara smiled and slightly leaned towards the camera. Both parties, who had previously remained silent while reviewing financial information, became more responsive and resumed discussing possible payment arrangements.

While hope sustains engagement with the mediation process, doubt functions as a mechanism for loosening certainty and interactional stubbornness (Nordquist 2025). Mediators seek to instil doubts through carefully calibrated interventions, like in the following example with mediator Marco. Here two former business partners articulated categorical positions, such as “My client believes he does not want to pay anything further... he expressed a total closure”, and “I don’t like people who try to rip me off. We’ll go to court.” In this case, mediator Marco seeks to instil doubt by saying:

Mediator Marco: Your lawyer knows that, given the shortcomings of the informal agreement between you and your former partner, the difficulty in court would be evident [gradually slower pace, then pauses]. In the end of that meeting, you didn’t sign an official agreement, did you?

When posing the question, Marco slowed his speech and briefly paused before referring to the lack of a formal agreement. The parties, who until that point had expressed categorical positions, became noticeably quieter, allowing a longer silence before responding. Consistent with the previous section, Marco mobilises his legal background as a form of legal capital (Bourdieu 2002) to manoeuvre the interaction. What is further interesting in his intervention is the fact that Marco seeks to instigate doubt by pointing to evidentiary weaknesses, to undermine legal certainty. Doubt is a feeling with a double temporal dimension: it works in the present by prompting parties to reassess their certainty and assumptions about responsibility, but it is also directed towards the future as it refers to the risks of court litigation. As mentioned earlier, doubt is an epistemic emotion that opens space for reflexivity and knowledge revision (de Sousa 2009). Previous research has shown the importance of doubt in legal reasoning (Törnqvist and Wettergren 2023) highlighting that doubt can be deliberately prompted in legal professionals’ own reasoning to problematize their certainty when perceived as problematic (Minissale and Bergman Blix 2025). Here, instead, we see how mediators mobilize doubt strategically in other individuals, to overcome their certainty, which freezes the negotiation.

In a different case, where a businessman refused to pay the instalments for a service provided by another company, mediator Raffaella introduces doubt while carefully calibrating empathy during caucus, by encouraging the party to consider the emotional burden of the debts on the party’s private life. Raffaella says that she is “thinking right now about the kids, which I understand are your greatest concern... you are managing a complicated situation with several worries.” This intervention acknowledges the

party's emotions and prepares the ground for doubt, as mediator Raffaella continues by saying:

Mediator Raffaella: Now I have to ask you something difficult [slowly lowers tone of voice, pauses] and for this I also need our lawyer's wisdom. You, lawyer, know your client and can give the best advice to him, evaluating what are the alternative to this mediation. So, what happens if we close this mediation without an agreement, if you go to court?

Before raising the question, Raffaella lowered her voice and paused for a couple of seconds. She then invites the party to imagine alternative futures. Importantly, doubt is collectively mobilised by involving the lawyer as a professional ally. This interactional move arguably distributes responsibility for doubt and reduces the risk of jeopardising impartiality. The businessman, who had previously spoken animatedly, became noticeably quieter and looked down repeatedly while considering the possible consequences of litigation. Overall, this example shows that doubt can be embedded in collective work and grounded in empathic recognition, which I will explore further in the following section.

5.6. *Calibrating empathy*

This final section uses an example from a commercial mediation with mediator Paolo to show that, while instilling emotions in the parties, mediators also calibrate empathy. I use the analytical concept of *calibrated empathy* to describe empathy as a multidimensional tool through which mediators seek to establish an empathic connection *with* the parties while simultaneously fostering empathy *between* them.

This case is a conflict between a big, international company represented by Matilde and a small, local company owned by Luca. They had signed a lease agreement for Luca to rent a machine, but the contract terminated due to his company financial difficulties during the COVID-19 pandemic. Matilde now asks for the payment of the due instalments. After an initial exchange where hostile emotions and conflictual positions are expressed by both parties, Paolo decides to proceed with caucus. The next sequence illustrates Paolo's emotion management strategies, showing how he calibrates empathy and tries to instil hope in the parties.

[Breakout room 2]

Mediator Paolo: So, what I can tell you is that they went down significantly

Luca's lawyer: How much? Can you tell us?

Mediator Paolo: They are a bit above [your proposal], but with flexibility on the payment modalities

Luca's lawyer: Then no.

Mediator Paolo: Lawyer, don't be too peremptory. What do you say, Luca?

Luca: Doctor, I think I'm being robbed, also because you know how it works [with lease agreements]. A guy came to me with 40 sheets and told me to sign here, sign there...

Mediator Paolo: These contracts are horrific! [sympathetic smile].

Luca: [Leaning backwards on his chair] I had no intention of returning the machine, I'm a victim of covid, I tried to keep the company afloat but unfortunately the market did

not allow me to do so (...) They don't understand that I'm putting in EVERYTHING AND MORE than I think is right.

Mediator Paolo: Doctor, I can assure you that both the lawyer and Matilde have told me that they really appreciated your behaviour, we clash a bit with the bureaucracy of these large companies

Luca: Of course [nodding, comprehensive tone].

Mediator Paolo: But I can assure you that the proposal is MUCH less than 11k but more than 4k, so a small effort, maintaining a soft payment modality.

Luca: I was saying, I can go up to 4k, but for me it's an effort that goes beyond the capabilities of the company.

Mediator Paolo: so, in the meantime doctor, thank you and I'll go back to the other room and see what happens.

Luca: Okay.

Luca's lawyer: All right.

Mediator Paolo: I think it's going to be a fast one.

Luca: Thank you Doctor Paolo, I can see that you are a very conscientious person.

Mediator Paolo: Alright, have a coffee without getting too excited though [smiles].

[Luca laughs.]

Paolo seeks to instil hope by creating expectations for a positive resolution under present conditions in which litigants experience distrust, anger, and fear. The mediator simultaneously conveys an empathic understanding of Luca's and Matilde's positions. In the quote, Luca's response reiterates his anger, but Paolo's reply – "These contracts are horrific" – is analytically significant. Here we see empathy in action. Paolo delivered the remark with a sympathetic smile and an informal tone, prompting Luca to visibly relax in his chair and elaborate further on his frustrations with the contract. In this way, Paolo acknowledges Luca's frustration and validates his lived experience with the contract terms. In doing so, he signals that he recognizes the contracts as unreasonable from Luca's perspective, thereby strengthening his empathic connection *with* him. In the continuation, Paolo tries to create empathy *between* the parties, emphasizing that Luca's efforts are recognized by Matilde. The mediator reframes the narrative by presenting Matilde, the creditor, as understanding, putting the blame on the company, rather than on her ("we clash a bit with the bureaucracy of these large entities"). As Paolo reframed the dispute in this way, Luca nodded repeatedly and his previously confrontational tone became more cooperative. This exemplifies calibrated empathy where the mediator convenes an emotional understanding of the situation to one party, whilst taking the blame off the other one.

Notably, Luca's "of course" expressed in comprehensive tone of voice signals a switch to alignment. Paolo continues in his effort to instil hope in Luca by emphasizing improvement ("...the proposal is MUCH less than 11k but more than 4k..."). Moreover, when Luca's lawyer reacts peremptorily, Paolo gently reasserts control over the interaction, redirecting attention to Luca. Managing lawyers' interventions constitutes another challenging aspect of mediators' work, as any temporary empathic alignment between the parties appears volatile when lawyers are not too keen on the mediation, as

they rather wish to pursue a civil lawsuit. Previous research has shown that “lawyers can side-line the issue of emotion and emphasise their preference for a focus on settlement”, continuously attempting to shift focus towards quantitative questions of how much” (Douglas and Coburn 2014, p. 122). This arguably complicates mediators’ emotion management strategies and empathy work.

It is also interesting to note that, to facilitate cooperation, mediator Paolo uses humour, which in conflict resolution theories is seen as a mechanism for emotional bonding (Fine and De Soucey 2005), while previous socio-legal studies see humour as tool to mitigate tension and manage emotions in the court setting (Scarduzio 2011). Here, humour signals warmth and playfulness that serves the purpose of lightening tension, allowing the parties to remain emotionally connected. Notably, Luca’s final remark on the mediator being “a very conscientious person” signifies trust arguably resulting from the mediator’s careful empathy work.

6. Concluding discussion

This article has examined how emotions guide commercial mediators’ decisions, how they manage their own emotions in relation to the principles of impartiality and neutrality, and how they manage the emotions of business litigants. By drawing on ethnographic observations and interviews with Italian commercial mediators, the analysis demonstrates that commercial mediators engage in continuous and situated emotion work.

Addressing the first research question, the analysis shows that mediators’ decisions as to how to move the process forward are guided by gut feelings and fear. Gut feelings operate as intuitive signals about what “really matters” to the parties, orienting mediators’ attention toward subtle, unspoken needs or morally salient dimensions of the dispute. At the same time, fear—understood as a subtle epistemic alert to risk (de Sousa 2009)—shapes mediators’ decisions about whether and how to act on their intuitions. Through emotional reflexivity (Holmes 2010), mediators continuously calibrate between problematising or endorsing gut feelings, which resonates with my previous findings on the management of gut feelings by Italian judges and prosecutors (Minissale 2024). This indicates a common, professionalised emotional practice concerning gut feelings as epistemic emotions that are fundamental across different legal professions.

Subtle fear functions less as a full-blown emotion than as an anticipatory hint or signpost of what might happen if mediators act in certain ways. It operates as an emotional alert that orients mediators in what they perceive as the appropriate way of acting, for instance foregrounding or hiding their legal judgement, or deciding whether to reprimand lawyers. This showcases how emotions impact on the way impartiality and neutrality principles are operationalised in practice, providing a first answer to the second research question. In fact, mediators’ accounts and practices reveal that impartiality is continuously produced through emotion management strategies, including suspending legal judgement and the lawyer identity, or employing them as a source of legal capital (see also Bourdieu 2002) to manoeuvre the interaction. To perform impartiality, mediators need to manage feelings of antipathy and set emotional boundaries with the parties and their lawyers. These practices partially resonate with existing studies on legal impartiality (Bergman Blix and Wettergren 2018, Roach Anleu

and Mack 2021), but also extend them by showing how mediators—often practising lawyers themselves—navigate fear, overlapping professional identities, collegial relations, and shared status. Impartiality thus emerges as a form of professionalised emotional performance grounded in situational awareness and emotional reflexivity. In line with previous sociological theorising on emotion performances (Bergman Blix and Minissale 2025), the article conceptualises mediators' emotion performances as situationally adaptive enactments of a professional script. While mediators operate within shared feeling rules that value controlled emotionality, pragmatism, and collegial respect, they continuously adapt these rules to the specific interactional context.

The third research question concerns how mediators manage litigants' emotions. The analysis shows that mediators manage emotional intensity through interactional arrangements such as caucus, where organisational training plays a key role in shaping patterned approaches. Whereas mediators trained in one organisation privileged joint sessions valuing strong emotional expressions as a form of emotional capital (Nordquist and Bergman Blix 2022), meaning a resource for recognition and attuning, others favoured early separation as a form of emotional containment. In this way, the article contributes to mediation research by theorising caucus not simply as a procedural tool, but as a distinct emotion management strategy embedded in organisational cultures and normative assumptions about the role of emotions in conflict.

Addressing the third research question further, the findings show that mediators manage litigants' emotions by working simultaneously on hope, doubt, and empathy. Previous literature on mediation has pointed on this direction by arguing that mediators' emotion regulation, a concept that is often used interchangeably with emotion management (Bergman Blix and Minissale 2025), refers to "intentionally eliciting an emotion to set a constructive tone for the mediation" (Schreier 2002, p. 103). This article adds to this literature by showing both how eliciting emotions works in practice and which emotions (i.e., hope and doubt) are crucial to facilitate dialogue and cooperation. Specifically, mediators cultivate hope by highlighting progress and shared understandings, to sustain parties' engagement with the mediation process despite fear, anger, or distrust. In the different context of conflicts between groups or states, Bar-Tal (2007, 390) advances a similar argument by seeing reconciliation as a process requiring "a change in the collective emotional orientations of fear, anger, and hatred", by developing "at least an emotional orientation of hope (...), which reflects the desire for positive goals of maintaining peaceful and cooperative relations with the other party". Likewise, I see anger, fear and distrust as hostile emotions that are necessary companions of hope (Kleres and Wettergren 2017, Wettergren 2025). When commercial litigants experience fear, anger, and distrust towards the other party, they need to feel hope for a positive resolution to remain engaged in the negotiation. Mediators' emotion work consists in nurturing hope as a counterweight to anger, fear and distrust, while strategically instilling doubt to loosen certainty and interactional stubbornness by encouraging the parties to reassess their positions and consider alternative futures. Hope and doubt therefore operate as complementary emotions as they both serve to facilitate dialogue and keep mediation alive, where hope sustains engagement while doubt enables reflexivity and change. Together, they form an emotional dynamic that is central to mediation practice. In this way, the article also contributes to previous sociological theorising on hope as a fundamental emotion in crisis (Wettergren 2025) and on doubt

as an epistemic emotion that can be strategically manoeuvred and is central to legal reasoning (see also Minissale and Bergman Blix 2025).

In this regard, another fundamental emotional dynamic is empathy, which requires calibration to prevent full emotional alignment and preserve an impartial display (Bergman Blix and Minissale 2022). Mediators use calibrated empathy with the parties by acknowledging suffering, frustration, or moral grievance, to then create empathy between the parties by eliciting and emphasising mutual understanding. This adds to previous studies on the role of empathy in mediation (Irvine and Farrington 2017), which have pointed to its dual function as a tool to build rapport and trust between the mediator and the party, and as a way to prompt the parties to put themselves in each other shoes. This latter function of empathy seems to be complementary to the process of instilling doubt, as both can “sow seeds of uncertainty that may lead a person to review their opening position” (Irvine and Farrington 2017, p. 253).

In conclusion, by foregrounding mediators’ emotion work both in relation to their decision-making and to the handling of emotions in interaction, the study contributes to socio-legal debates on the role of emotion in mediation practice and commercial dispute resolution. Future research could explore further how the emotional dynamics described in this article vary across national contexts, mediation models, and institutional settings, as well as how digital mediation technologies reshape the possibilities and constraints of emotion work.

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