

# The Mindful Lawyer: Mindfulness Meditation and Law Practice

What is an article on meditation doing in a bar journal? Why are mainstream firms and law schools offering classes in meditation? What is meditation anyway, and what could it possibly have to do with practicing law? This article will offer answers to these questions—and if you wonder whether meditation might enhance your legal practice, read on.

We will first look at the “remedial” aspect of meditation, the aspect most familiar to the public at large: meditation as stress-buster or as a way of managing the pressures of life. But beyond the salutary effect of “fixing what ails us,” meditation offers other benefits. We will explore how becoming familiar with one’s mental patterns undermines ingrained habits and strengthens our awareness. We will learn how recognizing our own patterns can help us deal with others and examine how the abilities cultivated by meditation can benefit us—and our clients—in real-life situations.

## Stress in Law Practice

It is common knowledge within the bar: the practice of law is stressful. Anecdotal evidence of this has been confirmed by empirical studies in which depression, substance abuse, domestic difficulties, and other stress-related syndromes are shown to be significantly more common among lawyers than in the population at large.<sup>1</sup> We lawyers also know—although we may not express it as frequently—that the practice of law can be rewarding as well, professionally and personally. But the pervasiveness of stress in law practice is probably underestimated, especially when it is associated only with “negative” situations. Losing a client is obviously stressful, but getting a new one introduces its own constellation of pressures: Will I please the client? Do I have the staff to handle the volume of work? Will staff balk at the increased workload? Will the client complain about our billings? Will we win the case? These are all connected with issues of professional success, and living up to success is also stressful.

Outside the specific details and issues of law practice itself, employee relations within law firms are often contentious, as may be the periodic negotiations with

our partners over the division of firm income, not to mention balancing the demands of a personal life with those of our profession. In short, we will never be free of stress; the question is how we manage to live with it.

Responding to the pressures and opportunities of practice, for some time professional organizations such as the Vermont Bar Association have offered counseling programs for attorneys. A more recent development in addressing these issues is the use of mindfulness meditation, which, in addition to being introduced to lawyers and law students,<sup>2</sup> has also been applied in a variety of other activities, from medicine to golf to the Green Berets.<sup>3</sup>

## What is Meditation and Does It Matter?

Meditation has a fairly recent history in the Americas and Europe. What are its nature and purpose? “Meditation” itself is a word with many meanings. In conventional usage it simply means contemplating a particular topic, considering it thoroughly. But meditation, as introduced into Western societies during the past several decades, refers to a practice of mind training that is new to contemporary secular culture.

Although religious contemplatives, often in monastic settings, have long practiced meditation,<sup>4</sup> mindfulness meditation is essentially a non-religious (or religion-neutral) practice, in that it is a way of cultivating innate human qualities. And even when we limit its meaning to mind training, the term still covers a lot of different approaches, somewhat like the many different kinds of “contracts” or “pleadings.”<sup>5</sup>

Mindfulness meditation has been described as “a friendly gesture toward ourselves in which we take time *simply* to be.”<sup>6</sup> It is a way of learning how to be present as a person, finding a ground of “being” from which “doing” may arise more clearly and effectively. The point is not to cultivate a particular state of mind believed to be desirable, such as happiness or contentment, although they may be byproducts; rather, the mindfulness practitioner simply sits with whatever arises in his or her mind. (As

mindfulness is most often practiced seated, it is often referred to as “sitting meditation” or simply as “sitting.”)

By sitting in this way and observing mental events arising—whether as thoughts, emotions, bodily sensations, sense perceptions, or daydreams—the mindfulness practitioner becomes familiar with the contents of mind and their patterns.<sup>7</sup> Deliberately boycotting the impulse to evaluate, change, or reject these contents, the practitioner learns to see them merely as phenomena that arise, dwell, and then pass away, much like scenery passing by.

Observing these mental contents, meditators frequently report a repetitive quality to their thoughts, sometimes called *habitual patterns*, like a tape loop or broken record; they also notice the inconsistent, helter-skelter character of the mental contents, often described as *discursiveness*. Somewhat to their surprise, meditators at times find themselves indifferent to what was previously compelling, while on other occasions being agitated by a thought that was previously reassuring. Noticing all this more clearly using mindfulness practice, we can begin to become familiar with the lay of our mental and emotional landscape.

## Meditation and Stress

Mindfulness provides a perspective that undermines the tendency to *identify* with the contents of mind, to see the contents as *oneself* or an integral part of oneself. Such identification is a source of much of what we experience as stress, anxiety, fear, or other irritating or painful states.

Let’s pause here to consider why identifying with one’s thoughts might be stress-generating. In the simplest terms, seeing thoughts as a part of “myself” creates, almost as a reflex, a need to defend or justify the thought. After all, if the thought is “me” (or a valued part of “me”) and the thought is flawed, conflicted, or incoherent, then ... well, you can see where the logic leads. In addition, constantly having to defend, justify, rationalize, or otherwise make sense of these mental contents requires continual effort, which is stressful.

But don't take my word for it. Having made this assertion about identifying with thoughts, I would add that the traditional attitude to working with all such statements is inquisitiveness. In other words, such assertions are viewed, not as truths to be accepted and believed, but as hypotheses to be tested empirically against one's experience. And that is where mindfulness meditation comes in.

In sitting we see not only the thoughts, feelings, and other experiences that arise, but also their implications: how one thought or feeling tends to lead to another, and how some thoughts lead to bodily tension and discomfort. Seeing that process motivates us to let go of the sense of identification and relax with our experience (also known as our life). This perspective allows us to shift from identifying with the content of our mental patterns to identifying with awareness itself, although not in the sense of believing "I am my awareness"—which could set up the same success/failure dynamic—but more like knowing when we have made it home.

This perspective inevitably begins to carry over into everyday life. After all, the mind we become familiar with while sitting is the same mind we live with in our

law practice, family situations, civic and charitable activities, and life in general. There, as in formal meditation, thoughts and emotions appear, remain for a while, and then dissolve (even if we try valiantly to hold on to them!). It becomes clear that mindfulness is not an otherworldly attempt to escape from the vicissitudes of life but is directly relevant to working with the events that occur there.

It's not that mindfulness is a panacea, that once we've done it, all of the challenges of life resolve into a blissful state; rather, it is analogous to working out at the gym. Nobody goes to the gym believing that one session on the exercise machines will convert one's physique into magazine-quality form. We get in shape through diligent application, and this is no less true with mindfulness meditation.

### Beyond Stress Management

So far this article has described the remedial effects of meditation: the clearing or ameliorating of stress and other obstacles to effective and satisfying functioning. But an even more significant consequence of sitting still with oneself is recognizing a simple sense of *presence*, of just being here with

whatever is going on (or not going on). In fact, this state is so simple, so subtle, that we may not ever have noticed it, or may have sensed it only rarely. But in contrast to our jumble of thoughts and emotions, simple presence is consistent and reliable.

Mindfulness practitioners are advised to look at that presence, to notice it and see how it is always there, beneath all the mental activities with which we identify. By cutting through or letting go of our thoughts, opinions, and emotional baggage, we cultivate the ability to relax into that presence.

Two caveats. One is that meditation does not cause this sense of presence; instead, it is part of our equipment as human beings, innate rather than acquired, and meditation is simply a tool for uncovering it. The other was raised earlier: such statements as these are hypotheses for exploration, not articles of belief.

Just as seeing the fickleness of our mind is useful in everyday life, presence is also relevant to our life and our professional activities. Bringing presence to our activities, we can see situations and people more clearly, without the distortions and preconceptions of our habitual mental contents. We hear more



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accurately what people say to us, pick up subtle clues, space out less, and notice more, all while remaining present with the task at hand. Such clarity enhances our effectiveness as lawyers because we are seeing more and ignoring—consciously or unconsciously—less.

### Other People

So far this article has addressed how mindfulness meditation cultivates awareness of one's *inner* experience. But an obvious fact about law practice is that it involves interaction with others. (Even Snoopy, in his attorney manifestation, occasionally had to take calls from clients, although he definitely preferred the company of his law books.) Whether they are clients, opposing counsel, judges, office staff, court reporters, court clerks, legal beat reporters, employees, or colleagues, the lawyer is constantly relating with other people.

Although dealing with others can be thought of as an *outer* experience, even there our *inner* experience is critical. We may have difficulty containing our irritation with a particular individual who "pushes our buttons." One person may arouse our suspicion, while another elicits our credulity. In such cases, the habitual tendency of mind is to construct a story line about the other individual ("She enjoys trying to make it difficult for me" or "He's trying to make me look bad" or "He's such a jerk") and our relationship with that person.

Normally, as we go about our business, our mind maintains a continuous commentary about whatever we encounter, its implications for our cases or careers, its significance for our personal happiness, a virtual soundtrack for our life. Writing this article I remembered a conversation I had while practicing law in Atlanta. Stan, a lawyer from another firm, having heard that I was a meditator, asked about meditation as we waited in a conference room. I mentioned learning to notice this "soundtrack" of thoughts. The next day Stan phoned to say that driving home from my office had been a thoroughly frightening experience: he hadn't realized how little he was actually present, how unaware he was of his surroundings while navigating rush hour traffic.

One congenial byproduct of sitting alone in meditation is the way it begins to inform the parts of our life involving others. We recognize mental chatter for what it is and let go of it. Letting go automatically brings us back to the

simple presence we have been cultivating in mindfulness practice, allowing our intelligence to function in our dealings with others, but without the distortions of habitual mental patterns.

Another is that as we practice mindfulness and see how our own mind works, we begin to perceive other people differently. Because of experiencing our own minds, when we observe others—their speediness, distractedness, and tense demeanor—we can see that they are subject to the same kind of habitual patterns we are, even though the content is different. We see the abrasive person in the office or across the bargaining table, the person who won't look us in the eye, the habitual schmoozer, in a new light. Realizing that on this basic level we are all quite alike, we may even feel natural sympathy for our adversaries. In this sense, compassion is a natural outgrowth of mindfulness.

### Applying Mindfulness in Law Practice

As lawyers we take on many roles: advocate, negotiator, counselor, employer, public servant, legal analyst, transaction structurer, and others. Mindfulness meditation, while sharpening our intelligence and instincts and broadening our perspective, does not prescribe particular behavior in any given role or function. Mindful lawyering is rather a matter of waking ourselves up to the situations we encounter.

A few examples illustrate the application of mindfulness to law practice. This is not an exhaustive examination, and the examples come mostly from the areas with which I am familiar, namely, transactional and estate planning practices. But even if your practice is oriented differently from mine, these examples may spark some insights about how mindfulness might apply to your situation.

#### Legal Analysis

Legal analysis is common to all kinds of practice. When drafting a contract or a brief, we have to know not only the legal rules but also their subtleties and lacunae. But a lawyer who is uncomfortable (or worse) with the absence of clear legal rules may "find" clarity (perhaps as a result of wishful thinking or an excess of speediness) where there is none. Or the lawyer, attempting to ingratiate himself with a client or acting in haste, may lead the client to believe that the case is stronger than the law supports.<sup>8</sup>

In retrospect these are somewhat obvious errors in judgment or analytical ability, and the reader may be thinking, "You don't have to be a meditator to avoid such pitfalls." And that is true. But the mindfulness practitioner has the advantage of tools that may not be available to the untrained person. In particular, practitioners of mindfulness often develop a knack or feel for noticing when mental patterns have taken on a momentum of their own. When that happens, the lawyer has received a clue to pause, slow down, and take another look.

Mental momentum may result from pride (the notion that a good lawyer is going to know the answer), fear (that the client won't respect—or pay—you if you have to go to the books—again!), or some other impulse. But whatever the motivation, the meditation practitioner has enhanced the potential for cutting that speed and doing better analysis.

#### Factfinder

The lawyer is sometimes required to be a factfinder, because devising a legal strategy depends on having a clear knowledge of what the facts are, or can be proved to be. The mindfulness practitioner, knowing how to see through his or her own habitual patterns, hopes and fears—and the distortions they introduce—has a more sophisticated view of how to relate with information provided by a client or others.

A client can be confused and distort the "story" in a way that seems to be advantageous. If a client is mistaken or even dishonest, the attorney who brings a clear, empirical attitude to investigating the facts has a better chance of not being misled, intentionally or negligently. (I understand that there may be situations in which a lawyer does not *want* to know the facts, but that is a different issue.) A lawyer with less mental static is also more likely to develop a sensitive "humbug detector."<sup>9</sup>

Unconscious preconceptions about our role as lawyers can also undermine our effectiveness. A sense of guilt or hesitation about being intimidating can lead the lawyer to fail to dig deeply enough into the client's story, potentially missing a key point in the client's case; likewise, an overly aggressive stance can squelch the disclosure of facts. The task for the mindful attorney is to drop the limiting roles that arise from a preconception (or identity) of either being the "tough-minded lawyer" or having a more "therapeutic" or "caring"

relationship to the client. Mindfulness practice does not dictate the lawyer's behavior but helps clarify the pushes and pulls of the situation by heightening the lawyer's awareness. It is more of an art than a science.

### Counselor

Helping clients make decisions is one of the most challenging and rewarding functions of the lawyer. Sometimes the course to be taken by the client is unclear, and a judgment call is required. At other times, the relative merits of alternative approaches need to be sorted out and understood, so that the client may make an informed choice.

Counseling usually occurs in a situation of uncertainty (otherwise it would hardly be needed), and uncertainty makes most people uneasy. Uneasiness or anxiety about a situation can unleash a storm of habitual mental patterns (sometimes called panic), but the mindfulness practitioner has, at least, the tools to see—and then cut through—those thoughts and emotions, and simply be present. In this situation, presence is synonymous with detachment, disinterestedness.

It is one of the apparent contradictions facing lawyers that we are bound to represent our client zealously and at the same time bring professional detachment to any situation. As we most often get caught, or "attached," by our habitual thought patterns, cultivating the ability to let go of them creates a basis for a "de-tached" view of the client's situation. This also creates the psychological space that allows the insights of one's life and professional experience to inform the advice.

For a lawyer buffeted by habitual and discursive thoughts, the task will be more difficult. As one lawyer/meditator told me:

One area in which I have noticed a change is in my capacity to listen to clients and hear their needs with less interference from "my stuff." This plays out in two ways. First, mindfulness meditation practice provides me with a means of staying "present" and focused with a client when my mind might otherwise wander ... Second, my practice makes me more aware of my habitual responses to fear, insecurity, anger, pride, and other feelings that inevitably arise in different client situations. The more I practice mindfulness meditation, the more often there is a conscious moment between a feeling (e.g., subtle fear,

anger, or eagerness to please) and my reaction to that feeling (e.g., defensiveness or undue deference). That moment is an opportunity for me to choose how to react rather than reacting unconsciously and realizing five minutes later (or days later) that my advice and actions were skewed by, for example, anger at opposing counsel or my fear of disappointing a client.<sup>10</sup>

### Negotiator

A valuable negotiating skill that mindfulness practice facilitates is avoiding unnecessary resistance. Because the practitioner knows how he or she has responded to stimuli (such as aggressive statements by opposing counsel) by becoming rigid and inflexible, the mindful lawyer has a better sense of how *not* to produce that reaction in the opposite counsel or client. When this competency is particularly refined, it can be successfully deployed, even in situations where stakes are high and emotions intense.

By contrast, a negotiator adopting a hyper-aggressive, bullying approach, may sometimes carry the day, but will frequently find that style counterproductive. It is also a high-maintenance strategy that often produces as much stress in the perpetrator as in the recipient.

The effective negotiator, not trapped in habitual thought patterns, is more open to possible solutions and is therefore more creative than one who has a fixed strategy. Seeing the potential to accommodate both sides can be the difference between being a "deal breaker" and a "deal maker." Allowing space in one's state of mind produces an opening for insights that could

never have shown themselves in a mind constantly awash in a flood of thoughts. As a lawyer who practices in New York told me,

The legal profession generally promotes the idea of "winning at all costs," and of course vigorous representation of a client is how we earn our living. On the other hand, my meditation practice has allowed me to expand my horizons beyond the narrow desires of my client, and I am able to better see what would satisfy the other party as well. With that insight, I'm often able to recommend to my client a way of solving a problem which allows both parties to leave the table with satisfaction. This is ultimately a much less costly and more efficient way to solve problems than winner-takes-all litigation.<sup>11</sup>

### Advocate

The advocate—one who speaks on behalf of a client's interests in a court, agency, or other public setting—also benefits from learning how to ride his or her state of mind. Simply standing up to make an argument can breed nervousness, anxiety, or fear, not unlike the musical or theatrical performer's stage fright. Because these states are so uncomfortable, we have a tendency to generate all kinds of thoughts (the habitual patterns spoken of earlier) to mask or pad the experience. (Again, don't take my word for it.)

The ability to think on one's feet requires equanimity and flexibility of mind; however, when challenged, this can be difficult. Some advocates, required to respond precisely and simply on the spot—but pinned down by a barrage of thinking—may fall back on "canned" arguments, which are often obvious and

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unconvincing. Others may just “freeze.”

Whatever one's typical response, the advocate who can recognize the fear/reaction dynamic and, in particular, learns effective strategies for working with fear, brings a powerful tool for effective law practice. Mindfulness teaches a specific approach to working with nervousness and fear, recognizing them before the “story” or other habitual response kicks in. The practitioner can also learn how not to shy away from the fear, but rather to appreciate the experience, turning it into a source of energy and alertness instead of an obstacle.

### Dynamic Equanimity

In every situation, the conscientious lawyer strives for a high level of effectiveness. Some lawyers seem to have a natural genius for this, as did a senior partner who (whether he knew it or not) was my unofficial mentor in my Atlanta firm. He was cultured and sophisticated, soft spoken, and possessed of a whip-like business mind that could always recognize what was significant. He never talked about himself, always more interested in what he could learn about others, and was generous, cheerful, and charming. And I am confident that he never meditated a day in his life. Yet, in retrospect, I see that many of the qualities that I so admired in this gentleman are the qualities that mindfulness cultivates.

Cultivating detachment from one's habitual mental “weather” not only helps to deal with stress, but also to maintain a balanced disposition or temperament. Not being undermined by buffeting thoughts and emotional patterns produces a more confident legal practitioner.

The ancient teachings about meditation speak of equanimity as a by-product of meditation. Although equanimity may seem more like a quality of a monk or hermit than people engaged in busy daily lives, by engaging in mindfulness meditation the lawyer can bring equanimity into the challenges of legal practice. With detachment from mental patterning, the lawyer can ride the energies of a situation, whether in negotiating a settlement, dealing with the pressure of deadlines, or responding to the arguments of adversaries.

### Learning to Practice Mindfulness

Although practicing mindfulness is a method of learning to disengage from

our personal preconceptions, opinions, and habits, it is also a completely *personal* experience. As a result, it is beneficial to learn it from someone who has a thorough background in the practice and is experienced talking about it with others. Learning mindfulness from a book, while better than not learning it at all, is a limited approach.

We often hear propositions and points of view praised as “scientific” or “objective” and others disparaged as “anecdotal” or “subjective.” While scientific studies<sup>12</sup> of the brain activity of meditators may encourage us to explore mindfulness practice, it is ultimately our own subjective experience—at times perhaps supported by outside feedback—that is the ultimate test of its value. If mindfulness meditation enhances our ability to live and engage in law practice fully and effectively, please our clients, and enjoy a more cheerful relationship to the situations and people around us, that is the test of its ultimate worth in cultivating effective—and rewarding—lawyering.

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<sup>1</sup> Leonard L. Riskin has collected in impressive body of research in Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1, 8-17 (2002) and works cited therein.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 3 – 7. See also, JOSEPH PARENT, ZEN GOLF: MASTERING THE MENTAL GAME (2002) and RICHARD STROZZI HECKLER, IN SEARCH OF THE WARRIOR SPIRIT: TEACHING AWARENESS DISCIPLINES TO THE GREEN BERETS (1990).

<sup>4</sup> See the Wikipedia entry for “Meditation,” <http://en.wikipedia.org/wiki/Meditation>, which describes numerous varieties of meditation, many associated with a particular religion and having a variety of objectives and techniques.

<sup>5</sup> Riskin, *supra* note 1, at nn. 107-111 and works cited therein. See also B. ALAN WALLACE, THE ATTENTION REVOLUTION: UNLOCKING THE POWER OF THE FOCUSED MIND (2006), JOHN KABAT-ZINN, FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS (1990), and MATHIEU RICARD, HAPPINESS: A GUIDE TO DEVELOPING LIFE'S MOST IMPORTANT SKILL

(2003).

<sup>6</sup> MICHAEL CARROLL, AWAKE AT WORK 221 (2004) (emphasis added).

<sup>7</sup> One of the Tibetan words for meditation is “gom,” which means “to become familiar with.” SAKYONG MIPHAM, TURNING THE MIND INTO AN ALLY 40 (2003).

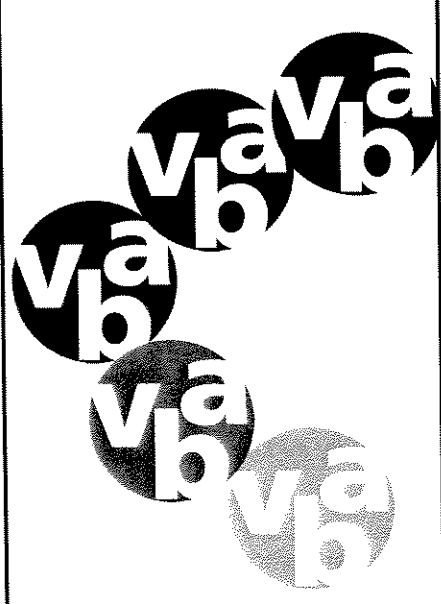
<sup>8</sup> A classic example of the mechanism of cause and effect known in Eastern religions as karma. See SAKYONG MIPHAM, RULING YOUR WORLD: ANCIENT STRATEGIES FOR MODERN LIFE 32 (2005).

<sup>9</sup> The more familiar contemporary term has been translated into the Victorian argot, as this is a family magazine.

<sup>10</sup> E-mail message from Andrew Garth, Esq. (April 6, 2007) (on file with author).

<sup>11</sup> E-mail message from Robert Chender, Esq. (April 7, 2007) (on file with author).

<sup>12</sup> For a description of some of these studies, see RICARD, *supra* note 5, ch. 16.



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