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Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior

Leonard L. Riskin
University of Florida Levin College of Law, riskinl@law.ufl.edu

AWARENESS AND ETHICS IN DISPUTE RESOLUTION AND LAW: WHY MINDFULNESS *TENDS TO* FOSTER ETHICAL BEHAVIOR*

LEONARD L. RISKIN**

It is a real treat for me to join you at South Texas College of Law for this timely and comprehensive program on *Ethics in the Expanding World of ADR: Considerations, Conundrums, and Conflicts*.[1] This law school had a major impact on my own work in mediation. In the early 1980s, when I was teaching nearby at the University of Houston Law Center, I volunteered to mediate at the Houston Neighborhood Justice Center ("NJC"). South Texas College of Law hosted the training program for volunteers. Two current members of the South Texas faculty played important leadership roles in these efforts. Judge Frank Evans was Chairman of the Board of the NJC, and plainly the most active and influential proponent of mediation in Texas. Professor Kim Kovach, the Associate Director of the NJC, was one of three co-teachers in the forty-hour training program. Both have gone on to make immense contributions to the field. And South Texas College of Law has shown a continuing commitment to leadership in mediation, in part by hiring my old friend Jim Alfini, one of the great leaders in the mediation movement, as its dean.

This symposium embraces a level of sophistication that would have been unimaginable to Houston mediators in the early 1980s. The issues we faced at that time were quite basic. We had to distinguish mediation from arbitration and from law practice. We also had to distinguish it from meditation; some of our mediation colleagues

 This is a cleaned-up, extended, and footnoted version of a luncheon presentation at the Symposium, *Ethics in the Expanding World of ADR: Considerations, Conundrums, and Conflicts*, sponsored by South Texas College of Law in Houston, Texas on Nov. 2, 2007. I am grateful to Daniel Bowling, Jonathan Cohen, Clark Freshman, Scott Peppet, Scott Rogers, and Ellen Waldman for comments on a draft of this essay.

** Chesterfield Smith Professor of Law, Levin College of Law, University of Florida.

1. 49 S. TEX. L. REV. 787 (2008).

arranged for listings in the Yellow Pages, only to find themselves under the "Meditation" heading, alongside disciples of the Maharishi Mahesh Yogi. Over the years, the field has differentiated mediation and arbitration and clarified mediation's relationship to the practice of law. Lately, we have even begun to study mediation's relationship to certain forms of meditation.[2]

Since about 1999, I have encouraged mediators and lawyers to practice mindfulness meditation, suggesting that it can help them deal better with stress, obtain more satisfaction from their work, and provide better service to their clients and society.[3] Today, I would like to explain how the practice of mindfulness meditation by dispute resolution professionals, and one of its intended outcomes—mindful awareness in action—could enhance their tendencies to behave ethically.

My presentation today is one-sided, but I hope not polemical, and, in the interest of time, relatively abstract. I will briefly explain mindful awareness, how to cultivate and deploy it, and how it can foster ethical behavior in negotiation and mediation.[4] I will conclude by briefly noting some limitations on this potential. In subsequent writing, I hope to explore these areas in greater detail.

I need to add a larger disclaimer: A number of experts on professional ethics are participating in this symposium, and I am not one of them. In addition, although I have written a good deal about mindfulness and how it relates to law and dispute resolution practice, I consider myself a novice in that field, too. So, today, I am trying to bring together aspects of two extraordinarily profound and complex

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2. *See* Daniel Bowling, *Mindfulness Meditation and Mediation: Where the Transcendent Meets the Familiar*, *in* BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION 263 (Daniel Bowling & David A. Hoffman eds., 2003); Don Ellinghausen Jr., *Venting or Vipassana? Mindfulness Meditation's Potential for Reducing Anger's Role in Mediation*, 8 CARDOZO J. CONFLICT RESOL. 63 (2006); Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 79 (2004); Evan M. Rock, Note, *Mindfulness Meditation, the Cultivation of Awareness, Mediator Neutrality, and the Possibility of Justice*, 6 CARDOZO J. CONFLICT RESOL. 347 (2005).

3. *See* Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, *in* THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION 447 (Marjorie A. Silver ed., 2007) [hereinafter Riskin, *Awareness*]; 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 (2002) [hereinafter Riskin, *Contemplative Lawyer*]; Leonard L. Riskin, *Knowing Yourself: Mindfulness*, *in* THE NEGOTIATOR'S FIELDBOOK 239 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006) [hereinafter Riskin, *Knowing Yourself*].

4. Confession: I could argue that mindfulness could promote ethical behavior in virtually *any* realm, but this is a conference on dispute resolution ethics.

fields of study and practice—and in just a few minutes, while the audience is lunching on a banquet of Mexican food. So I hope you will forgive the broad brush strokes.

I. MINDFUL AWARENESS (AND HOW TO CULTIVATE AND DEPLOY IT)

Mindfulness, as I use the term, is a certain way of paying attention—moment-to-moment, with equanimity and without attachment—to whatever passes through the conventional senses (touch, taste, smell, vision, and hearing) and the mind (thoughts).[5] A person in this state of present-moment, non-judgmental awareness can observe these phenomena, i.e., be "present" with them, and yet enjoy a degree of freedom from them, which can lead to better performance in negotiation or mediation—or any activity.[6] Imagine, for instance, that during a negotiation between Alex and Billie, Billie angrily calls Alex "a pompous fool who has no business negotiating anything." If Alex is not in a mindful state, he might react impulsively, out of a combination of negative emotions (e.g., anger, fear, hatred), habitual thoughts (e.g., "What a jerk!"; "I won't stand for that!"), and bodily sensations (e.g., rapid pulse, increased body temperature); so, Alex might announce his exceedingly low opinion of Billie or Billie's forbears, or punch Billie in the nose.[7] If Alex were in a mindful state, however, he would observe these emotions, thoughts, and bodily sensations with equanimity, as if from a distance; such awareness would diminish the power of such emotions, thoughts, and bodily sensations and foster calmness, which in turn would allow Alex to think clearly and thereby respond more skillfully, in ways that would further his interests or those of his client. In a similar fashion, as I will explain, mindfulness can increase the likelihood that lawyers, negotiators, and mediators will comply with formal norms of ethical conduct.

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5. *See* BHANTE HENEPOLA GUNARATANA, MINDFULNESS IN PLAIN ENGLISH 139–40 (updated & expanded ed. 2002); JON KABAT-ZINN, WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE 3–7 (1994). For a discussion of various meanings of "mindfulness," see DANIEL J. SIEGEL, THE MINDFUL BRAIN: REFLECTION AND ATTUNEMENT IN THE CULTIVATION OF WELL-BEING 3–28 (2007).

6. I have developed this idea more fully in Riskin, *Contemplative Lawyer*, *supra* note 3, at 23–33.

7. *See* Riskin, *Contemplative Lawyer*, *supra* note 3, at 26–29.

Mindfulness is both a path and a destination.[8] One cultivates the ability to be mindful by being mindful, or more accurately, trying to be mindful. And the cultivation process can be formal or informal. Formal practice involves doing mindfulness meditation, in which one systematically learns to pay attention to the breath, bodily sensations, thoughts, emotions—one at a time, at first, and then all at once. Informal practice includes a number of techniques that produce present-moment, non-judgmental awareness in daily life, such as deciding to be mindful around certain tasks (e.g., brushing your teeth or answering the phone) or events (such as stopping at a red light or standing in line at the grocery store).

Mindfulness meditation, an ancient method of cultivating and practicing present-moment awareness, most extensively developed by followers of the Buddha, today is employed widely in Western society, e.g., in health care, athletics, and increasingly, in education. It has found a small, tentative foothold in scholarship and teaching about law and dispute resolution practice and education.[9] Providers and students of mindfulness instruction in a professional environment might be motivated by any number of goals that complement enhancement of ethical behavior, such as improving the ability to deal with stress, enhancing on-the-job performance, and increasing satisfaction with work.

II. PROFESSIONAL SERVICE AND ETHICS

A major strain of ethical philosophy rests on the Golden Rule, the idea, articulated in various ways by countless philosophers and religious texts, that we should treat others as we would have them treat us.[10] We could divide most ethical precepts that derive from the Golden Rule into two sets. One set focuses on minimal standards—the least we can do to avoid behaving unethically. The other is aspirational—how we *ought* to behave in relationship to others. The minimal standards say we should not *inappropriately* benefit ourselves at the expense of others. The more aspirational standards urge us to extend ourselves to help others, sometimes at apparent risk to our perceived (possibly short-term) self-interest. This dichotomy is

8. As Krishnamurti put it, "Meditation is not a means to an end. It is both the means and the end." SURYA DAS, BUDDHA IS AS BUDDHA DOES: THE TEN ORIGINAL PRACTICES FOR ENLIGHTENED LIVING 136 (2007).

9. *See, e.g.*, Riskin, *Contemplative Lawyer*, *supra* note 3 (included in Symposium, *Mindfulness in the Law and ADR*, 7 HARV. NEGOT. L. REV. 1 (2002)).

10. *See generally* JEFFREY WATTLES, THE GOLDEN RULE (1996).

apparent in widely-accepted notions of ethical behavior.[11] Prohibitions on stealing express the minimal standard. Exhortations to give generously exemplify the aspirational.

The two kinds of ethical statements also appear in formal standards of professional ethics. Rules that prohibit a lawyer from charging unreasonable fees[12] or that require a mediator to "provide each party or each party's representative true and complete information about mediation fees"[13] enact the minimal standard. An aspirational quality inspires statements that "a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession,"[14] and that "[a] mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict."[15]

Many of the minimal standards proscribe conduct that would inappropriately benefit the professional at the expense of others. Sometimes the proscriptions apply to dealings with clients. Examples include standards of conduct for mediators that deal with conflicts of interest,[16] competence,[17] quality of the mediation process,[18] truthfulness in advertising and solicitation,[19] and providing true and complete information about fees.[20] Similar provisions appear in rules of professional conduct for lawyers that deal, e.g., with competence,[21]

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11. A similar dichotomy contrasts the duty to do no harm (nonmaleficence) and the duty to do good (beneficence). *See generally* TOM L. BEAUCHAMP & JAMES F. CHILDRESS, PRINCIPLES OF BIOMEDICAL ETHICS chs. 4 & 5 (5th ed. 2001).

12. MODEL RULES OF PROF'L CONDUCT R. 1.5(a) (2008).

13. MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard VIII.A (2005).

14. MODEL RULES OF PROF'L CONDUCT pmbl., para. 6.

15. MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard IX.B.

16. *Id.* Standard III.

17. *Id.* Standard IV.

18. *Id.* Standard VI.

19. *Id.* Standard VII.

20. *Id.* Standard VIII. See also mediator standards of conduct that deal with party self-determination and mediator impartiality. *Id.* Standards I & II. When a mediator deliberately violates these standards, he may be doing so in order to benefit one or more mediation parties, by producing a superior substantive outcome. On the other hand, he may also be motivated—consciously or subconsciously—to respond to his own emotional needs. Such needs could include the "core concerns"—appreciation, affiliation, autonomy, status, and role—which Roger Fisher and Daniel Shapiro tell us precipitate many emotions in negotiators. *See* ROGER FISHER & DANIEL SHAPIRO, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE 15 (2005); *see also* Leonard L. Riskin & Nancy A. Welsh, *Is That All There Is?:"The Problem" in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863, 886–87 (2008).

21. MODEL RULES OF PROF'L CONDUCT R. 1.1 (2008).

diligence,[22] fees,[23] confidentiality,[24] conflicts of interest,[25] and safekeeping property.[26] Other provisions attempt to protect third parties. The Model Standards of Conduct for Mediators, for instance, provide that "[i]f a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation."[27] And the Model Rules of Professional Conduct for lawyers contain numerous provisions designed to prohibit lawyers from taking inappropriate advantage of third parties or institutions. These include obligations of truthfulness in statements toward others[28] and candor toward a tribunal[29]

III. HOW MINDFUL AWARENESS TENDS TO PROMOTE ETHICAL BEHAVIOR IN NEGOTIATORS AND MEDIATORS[30]

Mindfulness tends to promote compliance with both minimal and aspirational applications of the Golden Rule; this is so, in part, because it fosters in the professional a number of qualities demonstrated by the mindful version of Alex in the hypothetical negotiation that I described earlier: an awareness of his own self-centered thoughts and inclinations, and a degree of freedom from them. In addition, mindfulness can foster a sense of interconnection, an understanding of others, and, sometimes, compassion for them. For simplicity's sake, I will focus on minimal ethical rules or standards that prohibit inappropriately benefiting yourself or your client or a mediation party, at the expense of someone else.

Several qualities or outcomes of mindfulness increase the likelihood that the mediator, lawyer, or negotiator will choose not to violate the minimal standard. First, through mindfulness, we become more aware of our own thought processes and the intentions behind

22. *Id.* R. 1.3.
23. *Id.* R. 1.5.
24. *Id.* R. 1.6.
25. *Id.* R. 1.7–1.11.
26. *Id.* R. 1.15. Perhaps all the provisions in the Model Rules that deal with the client-lawyer relationship are grounded on this principle. *See id.* R. 1.1–1.18.
27. MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard VI.A.9 (2005).
28. MODEL RULES OF PROF'L CONDUCT R. 4.1.
29. *Id.* R. 3.3.
30. If time and space allowed, I would explore several categories of behavior, along the ethical dimension, as to which mindfulness could have an impact, including: deliberately violating minimal standards; inadvertently violating minimal standards; deciding how to behave when facing conflicting legitimate obligations; and going above and beyond minimal standards and following higher aspirations.

our acts. We more easily notice the habitual self-centered thoughts and the emotions, bodily sensations, and behaviors they precipitate. When we observe these phenomena at a psychological distance, their strength or power or influence tends to diminish, and we have a chance to consider their merit. Mindfulness allows us to insert a "wedge of awareness"[31] before we act. In particular, mindfulness helps us notice the intentions that impel our behavior. When we consider or form an intention to behave in a way that would unduly benefit ourselves at the expense of another (e.g., to lie about a material fact to a negotiation counterpart), if we are mindful we may notice a number of phenomena. (As Yogi Berra put it, "You can observe a lot by watching."[32]) We might observe cautionary thoughts that flash through our minds, such as the realization that we are violating an ethical precept or that the contemplated act would cause suffering in others (and in ourselves).[33] We also might observe negative sensations and emotions through our bodies. To the person in a state of mindlessness, however, these phenomena may fall beneath the level of conscious

31. MATTHEW FLICKSTEIN, SWALLOWING THE RIVER GANGES: A PRACTICE GUIDE TO THE PATH OF PURIFICATION 28 (2001).

32. YOGI BERRA, THE YOGI BOOK: "I REALLY DIDN'T SAY EVERYTHING I SAID!" 95 (1998).

33. *See* Pounds, *infra* note 39 at 199–204. Lawyers are inclined to apply "masks" to individuals. In Professor Jonathan Cohen's words,

> Several decades ago, John Noonan, Jr. argued that lawyers frequently impose *masks* upon people that hide their fundamental humanity. . . .
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> Masking of persons occurs in negotiation too. If, when negotiating, Jane sees Bill merely as a means to her ends, Jane is imposing a mask upon Bill. By seeing Bill as a mere means, Jane masks many central features of Bill's humanity, e.g., his autonomy, his dignity, and his fundamental equality with Jane. None are characteristics that a mere means or instrument possesses. Suppose further that, rather than facing her instrumentalization or masking of Bill, Jane would rather deny it to herself, and see herself as a humanistic person rather than as a manipulative person. It is clear that this practice can harm Bill, since seeing Bill as an object may lead Jane to manipulate, deceive, coerce, insult, or otherwise treat Bill wrongly. Yet what ramifications does this have for *Jane's* internal psychology?
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> Treating Bill as an object and simultaneously denying or rationalizing this to herself may be a source of psychological distress for Jane. As reflected in a variety of indicators, American lawyers experience exceptionally high levels of psychological distress. While there are undoubtedly many causes to this (e.g., economic pressures to produce many billable hours, the frequency of hostile interactions with others, etc.), part likely stems from the moral emptiness many lawyers experience. Though I would not claim that treating others as objects in negotiations is the root of such emptiness, objectifying others in negotiation and elsewhere (e.g., seeing one's client merely as a source of income) may play a part of it.

Jonathan R. Cohen, *When People Are the Means: Negotiating with Respect*, 14 GEO. J. LEGAL ETHICS 739, 764–65 (2001) (footnotes omitted).

awareness. But mindfulness increases our capacity to notice them, and the likelihood that we will notice them. And the calm associated with mindfulness enhances our ability to reflect on the intention and associated warning signals.

Second, mindfulness helps us see interconnections with others. Mindful awareness allows us to more easily observe our own suffering, which helps us be aware of the suffering of others. As Longfellow put it, "If we could read the secret history of our enemies, we should find in each man's life sorrow and suffering enough to disarm all hostility."[34] And often such awareness produces compassion, and a desire to reduce suffering in ourselves and others.[35] In the words of lawyer-meditation teacher Patton Hyman,

> [A]s 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.[36]

Such insights, along with a greater understanding of the self and a softened attachment to its importance, are more likely to foster a desire to help others than to dismiss their concerns and interests. More generally, it could lead dispute resolution professionals to adopt an "orientation" or "stance" of respect toward others that would affect a range of their behaviors.[37] In addition, mindfulness allows us

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34. HENRY WADSWORTH LONGFELLOW, DRIFTWOOD (1857), *quoted in* JOHN BARTLETT, BARTLETT'S FAMILIAR QUOTATIONS 467 (Justin Kaplan ed., 17th ed. 2002).

35. Mindfulness practices tend to precipitate the development of such understandings and compassion and concern for others. In addition, however, meditative practices specifically intended to develop positive feelings toward others (and toward one's self) have long been associated with mindfulness instruction and frequently are taught and practiced in conjunction with mindfulness meditation. *See* Riskin, *Awareness*, *supra* note 3, at 453–54, 460–64; *see generally* SHARON SALZBERG, LOVINGKINDNESS: THE REVOLUTIONARY ART OF HAPPINESS (1995).

36. J. Patton Hyman, *The Mindful Lawyer: Mindfulness Meditation and Law Practice*, VT. B.J., Summer 2007, at 40, 42. Sympathy and compassion often travel together but are different. Generally, sympathy means to "feel for" someone, while empathy means to "feel with." *See* THE NEW OXFORD DICTIONARY 557, 1720 (Frank Abate & Elizabeth J. Jewell eds., 2001).

37. *See* Cohen, *supra* note 33, at 750.

to "stay present" with suffering, rather than to deny it or seek distractions or rationalizations or to demonize the other or treat the other merely as an instrument to achieve interests of our own or our client.[38]

Mindfulness also makes it more likely that one will adopt universal norms such as honesty and fairness.[39] And mindfulness helps us think clearly and to recall—and deliberate upon—the ethical values, rules, or standards to which we subscribe. Of course, most professionals draw not only upon professional ethics but also basic moral principles that they acquired elsewhere—e.g., through the teachings of a religion or organization or a spiritual or other advisor. During the calm deliberation fostered by mindfulness, we are more likely to remember the ethical values to which we have made some commitment, and to follow them.

The most challenging ethical choices arise when professionals face legitimate conflicting obligations: a lawyer whose duty to foster the interests of his client seems to conflict with the obligation of truthfulness to third parties; the mediator who experiences a conflict between the obligation of impartiality and the obligation toward a quality process.[40] Mindfulness both rests upon and develops

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38. *See id.*

39. *See* Scott R. Peppet, *Can Saints Negotiate? A Brief Introduction to the Problems of Perfect Ethics in Bargaining*, 7 HARV. NEGOT. L. REV. 83, 89 (2002).

> [A] more mindful person will likely become a more ethical person. Second, she will become more ethical in a particular way—that is, by committing to a less partisan, more universal perspective. In the negotiation context this change will likely lead her at least to commit (a) not to deceive or manipulate others, given that she would not want to be deceived or manipulated, and (b) to try to respect and take others' interests into account as she would expect others to take her interests into account.

Id.

Attorney Van Pounds has described ways in which mindfulness is likely to contribute to increased truth-telling, which he applauds.

> [T]he lawyer's choice to be more truthful will be affected by two principal mindfulness factors: (1) an enhanced awareness of interconnectedness with others; and (2) an enhanced self-awareness. As the lawyer becomes more mindful of her interdependence with clients, opposing parties and counsel, she will be induced to be more truthful. In addition, as the lawyer becomes more aware of her thoughts and feelings, she will find it more difficult to avoid the adverse effects of a less truthful course.

Van M. Pounds, *Promoting Truthfulness in Negotiation: A Mindful Approach*, 40 WILLAMETTE L. REV. 181, 205 (2004).

40. *See* MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard VI.A.10 (2005); Michael L. Moffitt, *The Wrong Model, Again: Why the Devil Is Not in the Details of the New Model Standards of Conduct for Mediators*, DISP. RESOL. MAG., Spring 2006, at 31; Joseph B. Stulberg, *The Model Standards of Conduct: A Reply to Professor Moffitt*, DISP. RESOL. MAG., Spring 2006, at 34.

equanimity. And equanimity fosters calm deliberation, which promotes better decision-making in such difficult situations.[41]

IV. CONCLUSION

I have given a simple account of how mindfulness can foster ethical behavior in dispute resolution. In future work, I plan to explore this issue more broadly and deeply. At that point, I hope to also examine the limitations on the capacity of mindfulness meditation to foster ethical behavior. Although some writers have praised mindfulness' potential to foster ethical behavior in dispute resolution,[42] Professor Scott Peppet has also noted its potential to

41. Mindfulness also allows us to consider alternatives to the narrow, self-serving strategies that often result from the pinched, adversarial perspective that so dominates the vision of many, lawyers and non-lawyers alike. *See* Riskin, *Contemplative Lawyer*, *supra* note 3, at 23–66.

Among teachers and practitioners of mindfulness meditation, there is a widespread understanding that mindful awareness promotes ethical sensitivity. This was cogently articulated recently in a document on *The Meditative Perspective* prepared by the Center for Contemplative Mind in Society's Law Program:

> A Sensitive and Realistic Sense of Ethics. With the meditative perspective we become more aware of the discomfort that comes with deviating from our internal values and considering unethical conduct, enlarging our resolution not to allow this to occur. Confidence in our commitment to this ethical path/approach brings courage and strength and allows us to nurture integrity in the midst of complex situations. It makes denial, distraction, and the demonization of others less of a default mode, and ultimately a choice we make less often.

The Center for Contemplative Mind in Society, The Meditative Perspective (Working Draft, April 2007), *available at* http://www.aals.org/documents/2008clinical/TheMeditativePerspective407.pdf (last visited Jan. 5, 2009).

42. I have written previously about the many ways in which mindfulness can help lawyers and other dispute resolution professionals deal better with stress and provide better service to their clients. *See* Riskin, *supra* note 3. In those writings I did not consistently distinguish good decision-making that has an ethical dimension from other decision-making about either substance or procedure. Evan Rock has considered the benefits of mindfulness in connection with one of the major ethical obligations of a mediator—to be impartial or neutral between the parties. *See* Evan M. Rock, Note, *Mindfulness Meditation, the Cultivation of Awareness, Mediator Neutrality, and the Possibility of Justice*, 6 CARDOZO J. CONFLICT RESOL. 347 (2005). Rock distinguishes between internal neutrality, which he correctly says may be impossible to achieve, and external neutrality:

make lawyers too ethical to engage in the "sharp practices" that some people (though not Peppet) think are necessary for lawyers to carry out.[43] In fact, the practice of mindfulness meditation affects people to varying degrees. Mindfulness training and practice does not routinely translate into consistent mindfulness in action—even among advanced practitioners. Pir Vilayat Khan, leader of the Sufi Order in the West, made a similar point when he said: "Of so many great teachers I've met in India and Asia, if you were to bring them to America, get them a house, two cars, a spouse, three kids, a job, insurance, and taxes . . . they would all have a hard time."[44] Each of us, no matter how much we meditate and try to maintain present moment awareness in life, will encounter situations in which we lose it. On the other hand, of course, mindfulness training and practice, especially those techniques meant to help us bring mindful awareness into daily life, can increase the proportion of time when we are likely to behave ethically or skillfully, either because we are in tune with others or in control of our responses to circumstances. Perhaps that's all we can expect from mindfulness training. And perhaps that's enough.

> A lack of internal neutrality is only problematic in a mediation session to the extent that a mediator's internal bias is externalized in his words or actions. The more aware a mediator is of the emotions, values, and agendas he is personally experiencing during a mediation session, the more he can structure his outward behavior to dissipate any manifestation of bias or preference. Therefore, while internal neutrality may be impossible to achieve, a mediator's awareness of his own thoughts and emotions is important for maintaining external neutrality.

Id. at 349.

The issue Rock addressed—mediator impartiality—inherently involves both minimal and aspirational aspects of ethical thought; what he calls "internal neutrality" is strictly aspirational—since almost no one can achieve it—but it seems that mediators often can achieve minimal standards of external neutrality. *See also* Angela Harris et al., *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in the Neoliberal Age*, 95 CAL. L. REV. 2073 (2007); Pounds, *supra* note 39, at 197–204.

43. Peppet, *supra* note 39, at 96.

> Increasing one's awareness has ethical consequences. One becomes, over time, a different sort of person. And that sort of person may no longer wish to engage in certain negotiation strategies. Rather than becoming *more* free, moment-to-moment, to choose a negotiation approach, a mindful negotiator may constrain himself, limiting his freedom of action in deference to his ethical commitments. And this, particularly for lawyers, may chafe against the lawyer's understanding—or others' understanding—of the lawyer's role.

Id.

44. JACK KORNFIELD, AFTER THE ECSTASY, THE LAUNDRY: HOW THE HEART GROWS WISE ON THE SPIRITUAL PATH, at xxi (2000) (quoting Pir Vilayat Khan).