

5-1-2012

Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium

Leonard L. Riskin

University of Florida Levin College of Law, RiskinL@law.ufl.edu

Follow this and additional works at: <http://scholarship.law.ufl.edu/facultypub>

 Part of the [Legal History, Theory and Process Commons](#), and the [Psychology and Psychiatry Commons](#)

Recommended Citation

Leonard L. Riskin, *Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium*, 61 J. Legal Educ. 634 (2012), available at <http://scholarship.law.ufl.edu/facultypub/322>

This Article is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact outler@law.ufl.edu.

Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium

Leonard L. Riskin

The first time I introduced mindfulness meditation to a gathering of lawyers, about twelve years ago, I was facing about 200 of them at an ABA conference in something like Grand Ballroom B of a Hyatt Regency Hotel. I was so apprehensive—concerned that I would offer them too much, or more than they wanted—that I asked them to close their eyes for only a minute—and I was surprised when they did so, and that so few of them peeked. By October 2010, a group of lawyers, law professors, judges, and law students sat in room 105 Boalt Hall, a standard large classroom at the University of California, Berkeley School of Law, at the Mindful Lawyer Conference, eager to soak up as much as they could. At this major event—co-sponsored by U.C. Berkeley and the law schools at the University at Buffalo, the University of California, Hastings, CUNY, the University of Florida, and the University of San Francisco—planners and presenters had the opposite concern: could we offer enough? Between these two conferences, efforts to introduce mindfulness to the legal profession had proliferated. Even though most law students, law professors, lawyers, judges, and mediators are unaware of such developments—and perhaps uninterested—thousands of their number have received training in mindfulness (and other contemplative practices) in the last decade—through law school courses and non-credit programs or in retreats, workshops or conference programs, many of which offer CLE credit.¹

The five articles in this symposium arose out of presentations at the 2010 Mindful Lawyer Conference. I wish to situate these articles and undertakings in a broader context. They resonate with and resemble similar developments in other arenas and in the wider society; and they both buttress and lean upon other initiatives within the legal profession.

Leonard L. Riskin is Chesterfield Smith Professor of Law and Director of the Initiative on Mindfulness in Law and Dispute Resolution at the University of Florida Levin College of Law. He served on the planning and program committees for the 2010 Mindful Lawyer Conference.

1. Conference organizers posted articles, course syllabi, and audio and video presentations, including meditation instructions and recordings of most conference sessions, *available at* www.MindfulLawyerConference.org.

The Nature and Meaning(s) of “Mindfulness”

The term “mindfulness” carries many meanings. As used in this symposium, however, it generally refers to a deliberate, present-moment non-judgmental awareness of whatever passes through the five conventional senses and the mind—to simplify: emotions, thoughts, and body sensations.

One cultivates the ability to be mindful principally through formal meditative practices, and then applies that ability in everyday life. Refined techniques for developing and sustaining mindful awareness were developed and popularized—along with other meditative practices and a vast body of philosophy and psychology—by the Buddha and his followers, beginning some 2,500 years ago. The principal goal was to reduce suffering by (and here I am drastically over-simplifying) helping people see through the delusions about the self that lead us to believe and act as if we can achieve long-term happiness or contentment by satisfying our cravings and aversions.

Mindfulness meditation can lead to new understandings about one’s self and others, and thus is often called “insight meditation.” Speaking generally, it can help people feel better and perform better at virtually any activity. Today, meditative and other processes for developing mindfulness are widely employed in Western society. In the U.S., for instance, we find mindfulness training programs in corporations and other organizations; elementary, secondary, undergraduate and post-graduate education; athletics; and corrections. Mindfulness meditation is widely used in medical settings to help people cope with chronic pain and stress and even to manage certain diseases. Many psychotherapists recommend or teach mindfulness in connection with psychotherapy. Neuroscientists and social scientists have studied mindfulness meditation and other contemplative practices and document a variety of impacts, correlations, and benefits.

Mindfulness in Law: History and Developments

Mindfulness meditation is one of a range of contemplative practices—including other forms of meditation, yoga, qi gong, and t’ai chi chuan—that have been introduced recently to the legal profession. Although mindfulness has gained the most traction, it often is taught together with one of more of these other practices.

Programs to introduce mindfulness to the legal profession have articulated a variety of overlapping goals and potential benefits. These range from spiritual enlightenment to just lightening up, and include feeling and performing better as a law student or lawyer or other conflict resolver (e.g., judge, mediator, negotiator); developing a deeper understanding of ourselves, each other, and the nature of reality; enhancing one’s ability to cope with stress; developing emotional intelligence competencies (in Daniel Goleman’s terms, self-regulation, motivation, empathy, and social skills); and promoting more ethical behavior. In her comprehensive survey of developments and possibilities in what she calls “contemplative law,” Rhonda Magee argues that

mindfulness should become *central* to law school education. She also describes its potential for helping law schools respond better to various recent critiques, including the Carnegie report and to help transform “the greater society in the direction of a more just world.”²

The development of mindfulness programs in the law and conflict resolution fields took off around 1999, with the first meditation retreat for Yale Law School students, funded by the Law Program of the Center for Contemplative Mind in Society and the Fetzer Institute. Similar retreats followed and included students from Columbia and U.C. Berkeley. In 2002, the *Harvard Negotiation Law Review* held a live symposium on Mindfulness in Law and ADR, and then published a set of articles that were presented at that symposium.³

These events documented and analyzed existing programs and stimulated scholarship, which—before the present symposium—included several books, and about 20 law review articles⁴ as well as innovations in law school education and continuing education for lawyers, judges, and other conflict resolvers (e.g. mediators and negotiators).

The 2010 Mindful Lawyer Conference continues and expands upon this tradition. The articles in this symposium describe and interpret what has happened (where, why, and how law students and lawyers are meditating), suggest or encourage new undertakings, and alert us to issues and challenges.

We begin with “The Mindful Lawyer: Why Contemporary Lawyers Are Meditating,” by Charles Halpern, who sparked this movement and has continued to lead and nurture it. He traces the development of mindfulness in law through his unique perspective, formed in part by his career as a lawyer, public interest entrepreneur, dean, and foundation president. He also describes his course at U.C. Berkeley, *Effective and Sustainable Law Practice: The Meditative Perspective*.

Angela Harris’s piece deals with the intriguing course that she and Stephanie Phillips taught at the University at Buffalo School of Law: *Mindfulness and Professional Identity: Becoming a Lawyer While Keeping Your Values Intact*. Next, David Zlotnick tells us how he teaches mindfulness in his *Trial Advocacy* course at Roger Williams University, in part to help students and lawyers cope with circumstances “when things fall apart.”

Although each of these authors experiences great benefits from meditation, their articles emphasize its potential value to law students and lawyers. The next two writers focus a bit more on how mindfulness practices have helped them. Katherine Larkin-Wong offers “A Newbie’s Impression: One Student’s Mindfulness Lessons.” She describes her experience in a course I taught at Northwestern called *Conflict Management in Legal Practice*—a course that integrates mindful awareness with certain specific lawyering skills (principally

2. Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 *UMKC L. Rev.* 535, 554-55 (2011).

3. Symposium, *Mindfulness in Law and ADR*, 7 *Harv. Negot. L. Rev.* 1 (2002).

4. *See, e.g., id.*; Symposium, *Mindfulness, Emotions, and Ethics in Law and Dispute Resolution*, 10 *Nev. L.J.* 289 (2010).

interviewing, negotiation and mediation). She also provides a helpful list of insights and suggestions for law professors seeking to bring mindfulness into law school courses.

Richard Reuben winds up the symposium with his “Bringing Mindfulness into the Classroom.” In contrast to the major thrust of the other articles in this symposium, Reuben does not deal with a specific course that includes mindfulness for students. Instead he highlights certain benefits of his own mindfulness practice—enhancing his skill and satisfaction in teaching traditional courses at the University of Missouri.

Mindfulness developments in law schools, in addition to those described in the articles in this symposium, are too numerous and varied to document, and new efforts emerge frequently. The offerings include for-credit courses built primarily around mindfulness or other contemplative practices, such as yoga and qi gong, and others that integrate—or at least introduce—mindfulness into clinics and established subjects such as negotiation, mediation, trial practice, and professional responsibility. We find mindfulness included in courses on emotional intelligence for lawyers at the University of Miami and the University of Missouri; combined with professional responsibility courses at the University of Miami; in a variety of dispute resolution courses that I have taught at the University of Florida and Northwestern; at the University of Florida in *The Human Side of Lawyering* and in the Domestic Violence Clinic. And quite a few law schools have offered mindfulness training without credit. Examples include the Lawyer in Balance Program at Georgetown, Vanderbilt’s Supportive Practices Group, Mindfulness-Based Stress Reduction Programs and weekly meditation sessions at several law schools.

In addition, a few law schools have established special programs on mindfulness. The most extensive of these may be the Mindfulness in Law Program at the University of Miami, directed by Scott Rogers.⁵ It is integrating mindfulness throughout the law school, offering courses, workshops, and various other experiences for students, faculty and staff. Some of these are based on Jurisight, a system that Rogers developed to teach mindfulness to law students and lawyers, using legal terms of art to explain mindfulness-related concepts.⁶ For some time, CUNY has operated the Contemplative Urban Lawyering Program and a course called Contemplative Practice for Social Justice Lawyers, taught by Professors Victor Goode and Jean Anselmo.⁷ The University of California, Berkeley recently launched the Berkeley Initiative for Mindfulness in Law, under the direction of Charles Halpern.⁸ I have directed

5. See http://www.law.miami.edu/about_us/mindfulness.php.

6. See Scott Rogers, *Mindfulness for Law Students: Using the Power of Mindful Awareness to Achieve Balance and Success in Law School* (Mindful Living Press 2009). See also <http://www.jurisight.com>.

7. See *Navigating Stress on a Demanding Path*, *CunyLaw*, Fall 2010, at 8.

8. See <http://www.law.berkeley.edu/mindfulness.htm>.

the Initiative on Mindfulness in Law and Dispute Resolution, first at the University of Missouri and currently at the University of Florida.⁹

Mindfulness also appears in a range of continuing education and conference programs for lawyers and conflict resolvers. Since 2000, for instance, I, as well as others, have been teaching or co-teaching workshops on mindfulness and conflict resolution or lawyering that range in length from two hours to four days. These have been sponsored by the AALS; the ABA and other bar associations; law firms; courts; law schools and other units of universities; corporate legal departments, government agencies, and NGOs. To my knowledge, such programs have taken place across the U.S. and in Australia, Austria, Canada, Denmark, Israel, and Greece.

Meditation groups for lawyers are functioning around the U.S. I am aware of such activities in Northern California, Denver, New York City and Portland, Oregon.

The Broader Context in Society and Legal Education

These efforts to promote mindfulness in law draw energy from a confluence of factors. In one sense, what is going on in law simply mirrors developments in medicine, psychotherapy, education, business, journalism, architecture, and in the wider society. Although the specifics differ in each realm, the challenges are quite similar. Many of us suffer from stress and an inability to focus, both of which get in the way of functioning well and finding satisfaction, or meaning, in our professional lives.

Such issues have recently assumed increased prominence in the legal profession. Partly as a consequence, we have seen an escalation in calls for reform in legal education, law practice, and the courts. In law school education, these include clinical courses and other curricular emphases on teaching of so-called practical skills (e.g. the required first-year Problem-Solving Workshop at Harvard and The Lawyer as Problem-Solver course at Northwestern).

Some reform efforts intend to lessen the dominance of the pinched, adversarial perspective that I have called “Lawyer’s Standard Philosophical Map,”¹⁰ or at least offer alternatives. These overlapping initiatives—which have practice and curricular dimensions—include aspects of alternative dispute resolution (e.g., interest-based negotiation, certain forms of mediation, and the notion of “appropriate dispute resolution”); therapeutic jurisprudence (which has spawned, e.g., “problem-solving courts”); collaborative law; restorative justice; holistic law; the lawyer as problem solver; the comprehensive law movement; efforts to “humanize” legal education and to inject “balance” into

9. The website is *available at* <http://www.law.ufl.edu/imldr/>.

10. Leonard L. Riskin, *Mediation and Lawyers*, 43 *Ohio St. L.J.* 29, 44-45 (1982).

legal education, fostered, for example, by the recently created AALS section on Balance in Legal Education.”

Each of these movements or efforts requires an ability to shift—or deliberately choose—one’s perspective or mindset, and that requires a good deal of present moment awareness. For this reason, mindfulness can serve as a foundational skill, or at least an important ally, in developing such awareness and the desire and capacity to implement such programs.

But mindfulness also can help in relation to traditional lawyering tasks, even within traditional perspectives. Various mindfulness practices can enable students to perform better in law school, by enhancing their ability to manage stress, concentrate, and develop and sustain higher energy levels. As a result, they can learn more, study more efficiently and perform better in class, clinics and law practice settings. The same sorts of benefits can accrue to law professors, lawyers and judges.

More generally, mindful awareness can help students and lawyers make better decisions because it enhances their awareness of circumstances and of internal processes that incline, or propel, them and others toward certain habitual perspectives and behaviors. Of course, habitual perspectives and behaviors are often useful, and we must rely upon them to get through life and professional practice. But they can get in the way of appropriate understanding and behavior.

Sometimes lawyers and students fail to think creatively or to use perspectives and behaviors that they have learned, and then regret it. Mindfulness can lessen the frequency of such errors by helping a person focus less on themselves, deal better with strong negative emotions, and be “present” with equanimity to more of what is going on inside and outside themselves.

Conclusion

Since about 1999, programs to introduce mindfulness to the legal community have proliferated rapidly—yet they are still unknown to the vast bulk of law students, lawyers, and judges. Commentators and proponents have articulated a range of potential benefits of mindfulness. These efforts have grown, I believe, because the participants in courses and programs such as those described in this symposium believe that mindfulness training and practice can help them feel and perform better in their professional and personal lives.

Efforts to introduce contemplative practices in the legal profession have yet to fall into clear patterns. We do see clusters, however. One cluster stresses stress reduction. Another emphasizes integrating mindfulness into aspects of law practice, such as listening, negotiation, mediation or litigation. Another brings ethics to the fore. Still another emphasizes public interest law. But regardless of their principal emphases, such efforts share hopes that members

11. For an overview of these and other similar movements, see Susan Swaim Daicoff, *Comprehensive Law Practice* (Carolina Acad. Press 2011).

of the legal profession and their clients and communities will benefit along all these dimensions. Of course the motivations of the program developers and teachers—and participants—do not always determine the outcomes. Seeking spiritual enlightenment may lead to stress reduction or better grades, or disappointment. As baseball catcher and philosopher Yogi Berra and physicist Nels Bohr *may* have put it, “Predictions are difficult, especially about the future.”¹² This applies not only to individuals participating in mindfulness programs, but also to the entire movement toward mindful awareness in law.

12. See *The Perils of Prediction*, Letters to the Editor, *The Economist*, June 2, 2007, available at http://www.economist.com/blogs/theinbox/2007/07/the_perils_of_prediction_june.