

Mindfulness and Professional Identity
University of California, Davis
King Hall School of Law
Course Information
Fall, 2012

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Office Hours: My regular Fall 2012 office hours are Mondays 1-3, but I am always willing to see you at a different time if those hours don't work for you. The best way to arrange an appointment with me is by email at the address above.

Readings: The required books for this class are George Kaufman, *The Lawyer's Guide to Balancing Life and Work: Taking the Stress Out of Success* (2nd ed. 2006); Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (10th anniversary ed. 2009); and Scott Rogers, *Mindfulness for Law Students* (2009). Additional readings will be posted on the course SmartSite, and/or handed out in class.

The last page of this course description provides a tentative syllabus for the semester. Specific topics and readings will shift as we go along.

Course Description:

Mindfulness has been defined as a conscious, moment-to-moment awareness, cultivated by systematically paying attention on purpose, and without judgment. It is both the capacity for paying attention in this way and the practice of cultivating this capacity. As this capacity is developed, it can be trained on inner experience, such as the body, the mind, and the emotions, and/or outer experience, such as interpersonal relations.

Practicing mindfulness can facilitate a sense of calm and inner balance. It also nurtures greater awareness, clarity, and acceptance of present-moment reality, and can help us respond creatively to pressures and demands, rather than blindly reacting out of habit. Finally, practicing mindfulness helps develop the power of concentration, reducing susceptibility to distraction.

Throughout the course, we will practice mindfulness exercises, both in class and at home. As we cultivate our capacity for directing the attention and noticing what is arising in the present moment, we will apply it to three domains of professional identity: the personal, the interpersonal, and the institutional.

In the first unit of the course, we will discuss the role of mindfulness in personal identity.

Topics covered will include the connection between the body and the mind in stress and relaxation responses; using mindfulness to examine one's strengths, weaknesses, and blind spots; reflection on what it means to be a "mindful" lawyer; and developing mindful strategies for thriving in law school.

In the second unit of the course, we will discuss the role of mindfulness in lawyering. Topics covered will include "soft skills" of lawyering such as various styles of listening; trauma and its effects, including vicarious trauma; basic principles of negotiation; the role of the lawyer in lawyer-client relations; and multicultural competency.

In the final unit of the course, we will discuss the role of mindfulness in the legal profession generally. Topics covered will include humanistic approaches to legal education, and new developments in the profession such as holistic and collaborative lawyering, restorative justice, and therapeutic jurisprudence.

Course Expectations: There will be no final exam in the course. However, each student will be expected to participate in a number of projects over the course of the semester.

"Class participation" will be more important for this class than for other classes you may take in law school. Class participation, for our purposes, has several aspects. The first is your physical presence. Class attendance is mandatory. Each student will be expected to attend *all* scheduled classes, participate in class exercises, and contribute to meaningful discussion, and also attend at least two of the three King Hall Mindfulness Initiative (KMHI) talks that will take place this semester. These will be talks by outside speakers on the second Monday of each month during the semester: September 10, October 8, and November 19. If your schedule does not permit you to attend at least two of these talks, please see me.

As important as your physical presence is your full attention. I will ask you to shut off your electronic devices, including laptops and cell phones, while in class or attending KMHI talks. This means that you may have to print out articles posted for class discussion, or share with someone next to you, rather than looking at them on your screen.

Second, each student will be expected to practice assigned mindfulness exercises at home and to keep a daily journal of your reactions to and reflections on these exercises. You will be asked to post reflections on or from your home journal weekly on the SmartSite, and respond to others' posts.

Third, each student will write three short papers (approximately 5-7 pages) due during the semester, one for each unit of the course. The first paper will be a reflection on your personal and professional identity and aspirations. You will turn in the first draft of this paper at the end of the first unit of the course; you will then have a chance to revise and resubmit it at the end of the entire semester. The second paper will concern mindfulness and lawyering skills. The third paper will be an opinion piece on the benefits and drawbacks of incorporating mindfulness more systematically into the practice and teaching of law. All three papers will be graded according to the criteria of good

writing (coherent argument, proper spelling, syntax, and grammar); skillful incorporation of readings for the course (intellectual knowledge); and skillful reflection on your own experience (experiential knowledge).

Grading: Your final grade will be based on (1) your attendance with full attention in class and at talks (20 percent); (2) your participation in the online journaling project (40 percent); and (4) the quality of your three short papers (Paper #1 20 percent, Paper #2 10 percent, Paper #3 10 percent for a total of 40 percent).

Journaling Guidelines: The journaling requirement has three distinct aspects. First is your personal journal, which no one will see but you. Aim to write something in this journal every day – a comment on what your meditation session was like that day, or if you did not meditate, a comment on why you did not. You might also use your personal journal as a gratitude journal (writing down three things you are grateful for each day), as a way of keeping track of your stress level, as a way of keeping track of your moods or cycles of energy (physical, mental, emotional, spiritual). Or you might use the journal as an exercise to boost your creativity (Julia Cameron’s book *The Artist’s Way* describes an interesting exercise called “morning pages” in which you write in a stream of consciousness manner longhand for three pages every morning to clear your head). Because no one will see your private journal but you, it will not be graded.

The second aspect of the journaling requirement is a weekly post to our SmartSite (by Sunday at midnight every week). Each post should be between 2-4 paragraphs. The primary purpose of the weekly posting is to share your knowledge and experiences with others. This might be intellectual knowledge (you may have found a good meditation practice or TED talk online, or be reading an interesting book), or experiential knowledge (you are having a terrible time meditating and are looking for support, or you had a great experience you would like to share, or had an insight about law school or life; you might post a poem that you like or a link to music you find moving – in which case please share what the poem or piece of music means to you and why). This project is meant to help us build community throughout the course and help us support one another in our practice. I will grade your contributions to the site based on their usefulness and relevance to the readings and class discussion (for posts sharing intellectual knowledge), and/or their degree of honesty, clarity, depth, creativity, and insight (for posts sharing experiential knowledge). I will not grade each individual post you make, but will look at the arc of all your postings at the end of the semester, reflecting on the quality and trajectory of your postings as a whole as well as the merit of each individual post.

The third aspect of the journaling requirement is your response to other people’s postings. Here, because the purpose of the SmartSite is community building, I will look especially for posts that demonstrate intellectual engagement and/or compassion, empathy, and insight, depending on the nature of the original post and your response. Your responses to posts are a chance to develop your “emotional intelligence” as well as your intellectual intelligence.

Important Dates

September 10: KHMI talk #1, 3:30-5:00 p.m.

September 24: First draft of Paper #1 due by 5:00 p.m. (Online submission via Dropbox preferred)

October 8: KHMI talk #2, 3:30-5:00 p.m.

November 5: Paper #2 due by 5:00 p.m. (Online submission via Dropbox preferred)

November 19: KHMI talk #3, 3:30-5:00 p.m.

November 30: Paper #3 due by 5:00 p.m. (Online submission via Dropbox preferred)

December 20: Revision of paper #1 due by 5:00 p.m. (Online submission via Dropbox preferred)

UNIT 1: Personal Dimensions of Mindfulness

Week 1 Reading: Keeva chapter 5, "The Mindful Practice;" Rogers 7-12; Full Catastrophe Living 235-263

August 20

Activities

1. Introductions – why did you decide to take this course, what are your expectations? (Ask how many people already meditate, do yoga, tai chi, qi gong)
2. Go over syllabus
3. Ground rules (apply to online as well as in person conversation): confidentiality; step up, step back; speak from your own experience; don't try to fix other people's problems; stay open-minded; GIGO. Other rules?
4. 3-minute sitting (see Brach 46, Rogers 90) (allows us to emphasize that minds wander and that does not mean you are failing or bad at this)
5. Pass out and go over "meditation tips"

August 21

Activities

1. Discussion of readings on stress from Kabat-Zinn, Full catastrophe
2. Dyad discussion and report-back: first experience of trying to meditate
3. Pass out bubble juice and talk about social worker's tip: the breath can be an ally in intervening in stress reactions [see workbook 23-24; related to P-R-O practice]

Homework:

1. Continue your daily meditation and journaling.
2. By Sunday night August 26 at midnight, post a SHORT (1-4 paragraph) reflection in the "Blog" section of the Smartsite. You may share an experiential reflection on how your meditation practice has gone this week, or you may share a reading, newspaper clipping, YouTube video, poem, or other comment relevant to our discussion. Feel free to comment on the postings of others, following the "ground rules" discussed on the first day of class and posted in the "Resources" section of this website.
3. Do the readings posted on the SmartSite for next week (and catch up with already-assigned readings as you acquire the books).
4. For discussion Monday morning:

Take note of a stressful event that happens this week. (If nothing stressful happens to you this week, you are exempt! Congratulate yourself!)

During the event, try to be aware of (1) what is happening in your body and (2) what is happening in your mind (e.g. repetitive thoughts). If you "blank out" during the event, you can try to reconstruct this later.

After the event, jot down what you took notice of. Add any retrospective observations, such as whether the feelings in your body were familiar to you; whether you still experience the stress response when you remember what happened; whether the stress dissolved suddenly or continued; and any delayed responses you might have had (e.g. an asthma attack two hours later).

There is nothing to turn in or post from this homework assignment, but we will discuss your results.

5. For fun, take the Energy Project test: <http://www.theenergyproject.com/tools/the-energy-audit#step1>

Don't forget to blow bubbles!

Week 2 Reading: The Energy Project, Harvard Business Review (managing your energy, not your time); Brach 97-108 (embodiment); Peurifoy 58-71 (stress management) [NOTE: in this unit on stress, there are two themes: (1) learning to respond to stress rather than just reacting to it; and (2) working on reducing one's stress level in the first place, itself divided into two parts: managing the environment and managing one's thoughts]

August 27

Activities:

1. Dyads and report back: stress signatures
2. Diaphragmatic breathing: yoga three-part breath
3. Something to share going around the room: integrate new folks into the community
4. Discussion of readings: energy and rituals

NOTES: Begin class by going around and having everyone give one word that describes their state of mind right now. Then as we go into our first sit, remind them that “this is it” – this is what we have to work with today.

August 28

Activities:

1. Read to them: Brach on embodiment (are you in your body?)
2. Discussion: dealing with pain (Brach); “relaxation” versus “meditation” versus “flow”; tips that people have shared (the color white; consoling your anxieties; the pad of paper for jotting things down).
3. Exercise: shoulder stretches; yoga cat, cow, and shoulder stretch
4. Embodiment: body scan

Homework: (1) keep at your meditation and don't forget to blog about it. If you like, try incorporating the body scan and see if you like it. (2) Stay in touch with your breathing: how do you breathe when things are just normal? When you're stressed? When you're relaxed? (3) Throughout the week, pay attention to the good stuff and try to be present for it. Notice what happens in your body and mind when something good happens to you.

Week 3 Readings: Rogers 29-38; Peurifoy 96-112 (8 forms of distorted thinking); 126-140 (learning to enjoy being human)

NOTES: This week, blog from The Joy Diet (other ideas for rituals)

September 3: Labor Day, no class

September 4

Activities:

1. Dyads and report-back: Pleasant events
2. Discuss readings on distorted thinking, learning to enjoy being human

Homework: Find your personal statement from when you applied to law school. Read it and consider Kaufman's questions: How did you find your way onto this path? (Also add: "turning away" and "turning to" question: Since coming to law school, what have you turned away from in your statement, and what have you turned to instead?)

Week 4 Readings: Patrick Schiltz excerpt; Levit, "The Happy Lawyer" chapter 7 (stories); Keeva chapter 9 ("The Service Practice")

September 10

Activities:

1. Group discussion: Personal statements; turning away and turning to
2. Group discussion: Values to pursue in a law career, and challenges or obstacles to realizing those values
3. Lovingkindness meditation with loved one and self

SEPTEMBER 10: KHMI talk #1: Charlie Halpern

September 11

Activities:

1. Discussion of Schiltz, Levit
2. Qi gong practice

Homework: Do the exercises in Kaufman pp. 15-37

Week 5 Readings: Krieger, Human Nature; Kaufman 15-37 (paths toward becoming a lawyer; do the two exercises); Levit, The Happy Lawyer (toolkit)

September 17

Activities:

1. Report-back from Kaufman exercise
2. Breath of fire exercise

3. Robert Frank video on what makes people happy

September 18

Activities:

1. Discussion of readings
2. Homework: Paper #1 from Kaufman 203-227 (creating your vision statement)

UNIT 2: Interpersonal Dimensions of Mindfulness

Week 6 Readings: Marge Shultz and Sheldon Zedeck, Identification, Development and Validation of Predictors for Successful Lawyering (conclusion) (2008); Chapter 2, "Professionalism," from Krieger, Neumann, McManus, and Jamar, Essential Lawyering Skills (1999); Rhonda Magee, "Educating Lawyers to Meditate?"

September 24

Activities:

1. Turn in Paper #1: vision statement/action plan
2. Walking meditation in indigenous people's garden

September 25

Activities:

1. Discussion of readings

Homework:

Week 7 Keeva chapter 8 ("The Listening Practice"); Binder, Bergman, and Price pp. 2-11 (theory of client-centered lawyering); Binder, Bergman, and Price pp. 16-77 (facilitator and inhibitors of conversation; active listening)

October 1

Activities:

1. Discuss Binder, Bergman, and Price excerpts

October 2

Activities:

1. Exercise: Client counseling simulation and de-brief
2. Further discussion of Binder, Bergman, and Price excerpts

Homework: (1) Take the "emotional intelligence" test: http://greatergood.berkeley.edu/ei_quiz/
(2) Self observation: Over the course of the week, notice situations of conflict with others. If you can do it, try to observe yourself either during or immediately after an interaction that you experience as

conflictual and take a few notes: What happened in your body and your mind as you perceived conflict occurring or you anticipated conflict? What emotions did you experience? Did your perception of the situation change after the interaction was over? (3) More generally, which negative emotions are you comfortable with? Which negative emotions give you trouble? What is your “conflict signature”: Do you avoid conflict? Do you rush into conflict? Do you exhibit particular patterns in your conflicts with others?

Week 8 Readings: Fisher and Shapiro, *Beyond Reason* 3-21; Marjorie Silver, *Love, Hate, and Other Emotional Interference in the Lawyer-Client Relationship*, 6 *Clinical L.Rev.* 259 (1999); Kathleen Waits, *Battered Women and Their Children: Lessons from One Woman’s Story*, 35 *Hous. L.Rev.* 29 (1998); Thrive Complex Identities chart; Rogers on judgments (pp 13-19; also 75-77)

October 8

Activities:

1. Homework de-brief: conflict signatures
2. Discuss readings on emotion, transference, Mary’s story

October 9

Activities:

1. Complex Identities discussion

Homework: Take the IAT: <https://implicit.harvard.edu/implicit/demo/takeatest.html>

Week 9: Gregory Mitchell, *Second Thoughts*, 40 *McGeorge L.Rev.* 687 (2009); Len Riskin, *Further Beyond Reason: Emotions, the Core Concerns, and Mindfulness in Negotiation*, 10 *Nev. L.J.* 289 (2010)

October 15

Activities:

1. Thrive Social Justice, guest speakers

October 16

Activities:

1. Discuss readings: bounded rationality, de-biasing, and mindfulness
2. Metta meditation

Week 10 Readings: Panel Discussion, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship*, 19 *Touro L.Rev.* 847 (2004); Evan Seamone, *Attorneys as First-Responders: Recognizing the Destructive Nature of Posttraumatic Stress Disorder on the Combat Veteran’s Legal Decision-making Process*, 202 *Mil. L.Rev.* 144 (2009); “Understanding and Preventing Compassion Fatigue - A Handout for Professionals”

October 22

Activities: Jennifer Edlin, guest speaker

October 23

Activities:

1. Discussion of readings: trauma, compassionate witnessing, vicarious trauma
2. Tonglen meditation

Week 11 Bades, Repression and Denial in Criminal Lawyering, 9 Buff. Crim. L. Rev. 339 (2006); Susan Daicoff, Expanding the Lawyer's Toolkit of Skills and Competencies, 52 Santa Clara L.Rev. 795 (2012); Chambliss, Two Questions for Law Schools, 36 J. Leg. Prof. 329 (2012)

October 29

Activities:

1. Walking meditation
2. Discussion: Can criminal defense lawyers afford to be empathetic? Can they afford not to be? Are there tensions between compassion, self care, and good lawyering?

October 30

Activities:

1. Discussion: Is the profession of law changing? Should legal education change?

Homework: Paper: reader response to Peppet, Can Saints Negotiate?

UNIT 3: Institutional Dimensions of Mindfulness

Week 12 Readings: Dorothy J. Della Noce, Robert A. Baruch Bush, Joseph P. Folger, Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy, 3 Pepp. Disp. Resol. L.J. 39 (2002); James R. Antes, Joseph P. Folger, and Dorothy J. Della Noce, Transforming Conflict Interactions in the Workplace: Documented Effects of the USPS REDRESS Program, 18 Hofstra Lab. & Emp. L.J. 429 (2001); Robert A. Baruch Bush and Joseph P. Folger, Mediation and Social Justice: Risks and Opportunities, 27 Ohio St. J. on Disp. Resol. 1 (2012)

November 5

Activities:

1. Watch TEDx talk by Cliff Saron and discuss
2. Body scan?
3. Paper #2 due at 5:00 p.m.

KHMI Talk #3: Clifford Saron, MIND Institute

November 6

Activities:

1. Discussion of paper #2 and readings: Does mindfulness make you a different person? Is that

different person less able to be a good negotiator? How do the different forms of mediation differ from one another? Can mediation serve social justice and if so, how?

2. Body scan

Week 13 Readings: Daniel Van Ness, “New Wine and Old Wineskins: Four Challenges of Restorative Justice,” 4 Crim. L. F. 251 (1993); James Gilligan and Bandy Lee, “From Provoking Violence to Preventing It By Creating ‘Anti-Prisons’ (Residential College and Therapeutic Communities),” 1036 Ann. N.Y. Aca. Sci. 300 (2004); Marc Ian Barasch, “Loving the Monster”

November 13

Activities:

1. Discussion: crime, evil, violence, forgiveness, grace

November 14

Activities:

1. Show videos: victim-offender mediation, RJOY, RSVP
2. Discussion: the restorative justice vision

Week 14 Readings: Lin/Harris/Selbin, From “The Art of War” to “Being Peace”

November 19: Guest speaker, Margaretta Lin

Activities:

1. Margaretta Lin

November 20

Activities:

1. Discussion: thankfulness and dark gifts
2. Full metta meditation

Week 15 Readings: “Just Worrying” exercise; Keeva, Transforming Practices, chapter 1, “Terra Cognita,” and chapter 13, “The Choice Is Yours;” Sam Harris, “Killing the Buddha,” Shambhala Sun, March 2006, p. 73; Jon Kabat-Zinn, “Is Mindfulness Spiritual?” in Wherever You Go, There You Are

November 26

Activities:

1. Discussion: Is mindfulness religion? Is it spiritual? If so, what is its proper relationship to secular law practice or legal education?
2. Body scan

November 27

Activities:

1. Wrap-up discussion: What did you take away? How will you maintain your own

mindfulness in the future?

November 30: Paper #3 due at 5:00 p.m.