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# The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients

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*Editor's Note: On March 8, 2002 the Harvard Negotiation Law Review hosted a forum to discuss Prof. Riskin's article and the implications of mindfulness meditation for legal practice and alternative dispute resolution. The five comments that follow this article were solicited by the Harvard Negotiation Law Review to provide a variety of perspectives on mindfulness meditation and its implications. All five of the comment authors also participated in the March 8th forum.*

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I learned a great deal that contributed to this work at meditation retreats sponsored by the Center for Contemplative Mind in Society for Yale and Columbia law students and for lawyers and law professors; from the Teacher Development Intensive at the Center for Mindfulness in Medicine, Health Care and Society at UMass Memorial Health Center; from the meditation teacher training course led by Matthew Flickstein, director of the Forrest Way Retreat Center in Virginia; from various retreats and programs sponsored by Mid-America Dharma and the Show Me Dharma Sitting Group (especially from talks by Phil Jones and Ginny Morgan); from students in my courses on Understanding Conflict at the University of Missouri-Columbia; from participants in programs on mindfulness in law and mediation that I conducted at the Cardozo, Harvard, Marquette, and Touro Law Schools; from participants in CLE or other mediation training programs sponsored by the University of Missouri-Columbia, the Iowa Peace Institute, and Southern Methodist University, Pepperdine University, AVM (in Salzburg, Austria); and from participants in programs I presented at conferences sponsored by a variety of organizations, including the American Bar Association, the Association for Conflict Resolution, the Michigan Dispute Resolution Conference, the Nordic Mediation Conference, and Wisconsin Association of Mediators conferences, and the Alabama Mediation Conference.

I thank the editors of the HARVARD NEGOTIATION LAW REVIEW, especially Hansel Pham, for organizing this print symposium and the March 8, 2002 live symposium; the Program on Negotiation at Harvard Law School, the Harvard Negotiation Project, the Harvard Negotiation Research Project, and the Office of Student Life, for supporting that conference; those who commented, either live or in writing or both (William Blatt, Doug Codiga, Cheryl Conner, Clark Freshman, Adele Hayes, Greg Feldman, Charles Halpern, John Hamilton, Steven Keeva and Scott Peppet); and for his insightful moderating, Robert Mnookin.

## INTRODUCTION

Lawyers and law students in many parts of the U.S. are gathering in dimly lit rooms, sitting down on chairs or cushions, closing their eyes, and looking inside themselves. They observe their breath, their bodily sensations, their emotions, and their thoughts. They learn how their minds work. They are doing mindfulness meditation, a method of non-judgmental, moment-to-moment attention developed some 2500 years ago by the Buddha. And sometimes they get credit—toward a law degree or Continuing Legal Education (CLE) requirements.

It seems incongruous: lawyers—whose professional work tends to focus on the external<sup>1</sup> and to rest on thinking, judging and action—engaging in a practice that, in contrast, focuses on the internal and rests on *not* thinking, *not* judging, and *not* acting.<sup>2</sup> Yet 70 lawyers from the Boston office of Hale and Dorr LLP participated—in varying degrees—in extensive training in this method provided by the firm.<sup>3</sup> Yale and Columbia law students have attended meditation retreats designed for them,<sup>4</sup> and students at seven other law schools—Denver, Hastings, Miami, Missouri-Columbia, North Carolina, Stanford, and Suffolk—have taken mindfulness meditation instruction on campus, sometimes as part of law school courses.<sup>5</sup>

These lawyers and law students are not alone. In recent years thousands of North Americans have learned mindfulness meditation—also known as insight or Vipassana meditation—through

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1. In their work, lawyers tend to look toward external sources of guidance, such as rules and standards articulated by various bodies. They also tend to look toward external sources for their own satisfaction. See Lawrence S. Krieger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J.L. & HEALTH 1, 18 (1998-99).

2. See *infra* Part III.

3. See FERRIS URBANOWSKI, *EVALUATION OF THE Power of Mindfulness in the Workplace*, an Eight Week Mindfulness-Based Stress Reduction Program conducted for Hale and Dorr by the Center for Mindfulness in Medicine, Health Care, and Society, University of Massachusetts Medical Center 1 (1998) [hereinafter 1998 HALE AND DORR EVALUATION]; FERRIS URBANOWSKI, *EVALUATION OF THE Power of Mindfulness in the Workplace*, an Eight Week Mindfulness-Based Stress Reduction Program conducted for Hale and Dorr by the Center for Mindfulness in Medicine, Health Care, and Society, University of Massachusetts Medical Center 1 (1999) [hereinafter 1999 HALE AND DORR EVALUATION]; see also *infra* text accompanying notes 135-36.

4. See *infra* notes 142-45 and accompanying text.

5. See *infra* notes 164-78 and accompanying text.

programs in the corporate sector<sup>6</sup> (e.g., at Monsanto<sup>7</sup> and BASF<sup>8</sup>), in athletics (the Chicago Bulls and L.A. Lakers basketball teams),<sup>9</sup> and in health-care settings,<sup>10</sup> through non-profit organizations that

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6. The corporate world is experiencing a great surge of interest in matters of the spirit. Some 300 books on the subject have been published recently. See Marci McDonald, *Shush, The Guy in the Next Cubicle is Meditating*, U.S. NEWS & WORLD REPORT, May 3, 1999, at 46. Well-known titles include JOSEPH JAWORSKI, *SYNCHRONICITY: THE INNER PATH OF LEADERSHIP* (1996); DAVID WHYTE, *THE HEART AROUSED: POETRY AND THE PRESERVATION OF THE SOUL IN CORPORATE AMERICA* (1994); LEWIS RICHMOND, *WORK AS A SPIRITUAL PRACTICE: A PRACTICAL BUDDHIST APPROACH TO INNER GROWTH AND SATISFACTION ON THE JOB* (1999). International meetings of business leaders feature presentations on the topic. See McDonald, *supra*. Programs include not only meditation but also yoga and literature. Some corporate efforts are meant to enhance creativity and competitiveness. In the words of Craig Elkins, who leads training programs “designed to open spiritual dialogue”: “If your people aren’t allowed to bring their whole selves to work—body, mind, and soul—then you’re not going to win.” *Id.* Some motivation, however, comes from other human needs. William McLennan, Jr., a senior lecturer at Harvard Business School, puts it this way: “What we’re seeing is an increasingly felt need from people to integrate the spiritual dimension of their lives into what they do for most of the day. People are starting to realize that if they’re going to spend a good part of their lives in the offices, they’d like that time to be spiritually as well as materially rewarding.” Marguerite Rigogiloso, *Spirit at Work: the Search for Meaning in the Workplace*, HARVARD BUSINESS SCHOOL BULLETIN ONLINE, Apr. 1999, at 1. For other examples, see <http://www.enlightenedbusiness.com>.

7. See McDonald, *supra* note 6; Telephone Interview with Elizabeth Freyer, St. Louis-based insight meditation teacher (July 7, 2000); MONSANTO CORPORATION, 1999 MINDFULNESS COMMUNITY PROGRAM (flyer).

8. CENTER FOR MINDFULNESS IN MEDICINE, HEALTH CARE, AND SOCIETY, STRESS REDUCTION CLINIC, UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL, THE POWER OF MINDFULNESS IN THE WORKPLACE, MINDFULNESS-BASED STRESS REDUCTION PROGRAMS FOR CORPORATIONS (Brochure, n.d., received July 1, 2000).

9. See PHIL JACKSON & HUGH DELEHANTY, SACRED HOOPS: SPIRITUAL LESSONS OF THE HARDWOOD WARRIOR 67, 118-20, *passim* (1995); PHIL JACKSON & CHARLES ROSEN, MAVERICK: MORE THAN A GAME 279, 289 (2001); David Shields, *The Good Father*, N.Y. TIMES MAG., Apr. 23, 2000, at 58; Mark Rowland, *Guru Phil*, LOS ANGELES MAG., June 2000, at 60.

10. See JON KABAT-ZINN, FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS (1990) [hereinafter KABAT-ZINN, FULL CATASTROPHE]. Over 11,000 people have completed the Mindfulness-Based Stress Reduction (MBSR) program at the University of Massachusetts Medical Center in Worcester; some 240 other programs based on this model operate elsewhere. *Guidelines for Assessing the Qualifications of Mindfulness-Based Stress-Reduction (MBSR) Providers*, in CENTER FOR MINDFULNESS IN MEDICINE, HEALTH CARE, AND SOCIETY, MINDFULNESS-BASED STRESS REDUCTION PROFESSIONAL TRAINING RESOURCE MANUAL (unpaginated) (Jon Kabat-Zinn & Saki F. Santorelli, eds., 1999) [hereinafter Kabat-Zinn & Santorelli]. For a listing of such programs see *Mindfulness-Based Stress Reduction (MBSR) Programs We Know About*, in *id.* (unpaginated); “Other MBSR Programs We Know About” available at <http://www.umassmed.edu/cfm/mbsr>.

Mindfulness meditation also has been employed in conjunction with psychotherapy. See MARK EPSTEIN, THOUGHTS WITHOUT A THINKER (1995) [hereinafter MARK EPSTEIN, THOUGHTS]; MARK EPSTEIN, GOING TO PIECES WITHOUT FALLING APART (1998)

provide training and other resources to the public;<sup>11</sup> or through programs specially designed for people connected with particular groups or activities, such as environmental organizations,<sup>12</sup> philanthropists and leaders of foundations,<sup>13</sup> journalists,<sup>14</sup> prisoners,<sup>15</sup> and Green

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[hereinafter MARK EPSTEIN, *PIECES*]; Jeremy D. Safran & J. Christopher Muran, *Negotiating the Therapeutic Alliance: A Relational Treatment Guide* (2000); ZINDEL V. SEGAL ET AL., *MINDFULNESS-BASED COGNITIVE THERAPY FOR DEPRESSION: A NEW APPROACH TO PREVENTING RELAPSE* (2002); John D. Teasdale, et al., *How Does Cognitive Therapy Prevent Depressive Relapse and Why Should Attentional Control (Mindfulness) Help?*, 33 *BEHAVIORAL RES. & THERAPY* 25 (1995).

11. For a worldwide listing of retreats and other insight meditation activities, see the most recent issue of *THE INQUIRING MIND*, a journal of the Vipassana community, available from The Inquiring Mind, P.O. Box 9999 Berkeley, CA 94709. See also <http://www.trycycle.com> and <http://midamericadharm.org> for similar listings. Major providers of insight meditation training to the general public include: Insight Meditation Society (1230 Pleasant Street, Barre, MA 01005; Tel: 978/355-4378); Spirit Rock Meditation Center (5000 Sir Francis Drake Blvd, P.O. Box 169 Woodacre, CA 94973; Tel: 415/488-0164; Fax: 415/488-017); Vipassana Meditation Centers operated by S.N. Goenka and his assistants around the world (<http://www.dhamma.org>); Mid-America Dharma Group (717 Hilltop Drive, Columbia, MO 65201; Tel 573/817-9942; email: [gmorgan@coin.org](mailto:gmorgan@coin.org); <http://midamericadharm.org>); Forest Way Insight Meditation Center, (P.O. Box 491, Ruckersville, VA 22968; Tel: 804/990-9300; Fax: 804/990-9301; <http://www.forestway.org>).

Many Americans meditate alone on a daily basis or with weekly sitting groups. For a listing of two hundred twenty-two such groups in the U.S. and Canada, see *Sitting Groups Around the U.S. and Canada*, *THE INQUIRING MIND*, Spring 1999, at 42. This listing includes only those groups that are well-organized and seeking new members. Doubtless many other sitting groups that do not have such characteristics are active.

12. The Center for Contemplative Mind in Society has conducted mindfulness retreats for heads of environmental organizations and for senior staff of such organizations. CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, *A CONTEMPLATIVE APPROACH TO LAW* 35 (1999). Note from Douglas A. Codiga, Director, Law Program, Center for Contemplative Mind in Society, to Leonard L. Riskin (Dec. 19, 2000) (on file with author).

13. CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, *SPIRITUALITY AND PHILANTHROPY: A GATHERING* (1997).

14. In 1998, the Fetzer Institute of Kalamazoo, Michigan hosted journalists and other members of the media, academia, and related fields at a weekend retreat that included mindfulness training as well as a focus on the spiritual aspects of the media and its possible role in the "unfolding of a deeper spiritual understanding." Joan Konner, *Good Questions*, *COLUM. JOURNALISM REV.*, Sept./Oct. 1998, at 6.

15. Indian prisons have made the most extensive use of insight meditation training. At India's largest facility, Tihar Jail, which holds 10,000 prisoners under very difficult conditions, meditation trainings for staff and inmates have operated since 1993. Vipassana Meditation Courses in Prisons, at <http://www.dhamma.org/prisons.htm>. An excellent videotape documentary of this project, *DOING TIME, DOING VIPASSANA* (1997), is available through that website. The King County (Seattle) Jail also has carried out extensive mindfulness training. See David Foster, *Meditation Taught to Prisoners*, *SEATTLE TIMES*, Mar. 22, 1998, at B1; Mieke H. Bomann, *Prison Experiments with Eastern Meditation Technique*, American News Service, Article No. 587, Aug. 24, 1998, available at <http://vipassana.org>; *Living Time, Not Doing Time*:

Berets.<sup>16</sup> Several medical schools include mindfulness meditation in their curricula,<sup>17</sup> as do many undergraduate, graduate, and

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*An Interview with Kiran Bedi and Lucia Meijer*, 16 *INQUIRING MIND* 6 (Spring 2000). A videotape based on the Seattle program also is available: *CHANGING FROM THE INSIDE* (David Donnenfield, Producer and Director, 1998), which may be obtained from the University of California Extension Center for Media and Independent Learning; Tel: 510/643-2788. The Stress Reduction Clinic at the University of Massachusetts Medical Center has offered meditation training in Massachusetts' prisons. Jon Kabat-Zinn, *CURRICULUM OUTLINE, STRESS REDUCTION CLINIC, UNIVERSITY OF MASSACHUSETTS MEDICAL CENTER*, in Kabat-Zinn & Santorelli, *supra* note 10. Other programs have taken place in Lancaster Castle Prison in Lancaster, England, and in Taiwan. *Id.* For other information, see *UPAYA PRISON PROJECT, CONTEMPLATIVE PRACTICE IN PRISON AND BEYOND* (A Report of the First Meeting of the National Network of Contemplative Prison Programs, Oct. 7-10, 1999, Santa Fe, N.M.). Copies are available from Upaya Prison Project, 1404 Cerro Gordo Rd., Santa Fe, NM 87501 (505) 986-8518. It seems likely that many other prison-based mindfulness meditation programs, perhaps less intensive and less extensive, are going on. I am aware, for instance, of mindfulness meditation training at three correctional institutions within 150 miles of my home.

16. A unit of the Green Berets has learned mindfulness meditation, along with a number of other spiritual practices. RICHARD STROZZI HECKLER, *IN SEARCH OF THE WARRIOR SPIRIT: TEACHING AWARENESS DISCIPLINES TO THE GREEN BERETS* 2, 71, 83-98 (1990). One of the instructors believed these spiritual practices were intended to help them join a tradition of historical and mythical "warriors" who "found their strength and integrity by defeating their inner demons, living in harmony with nature, and serving their fellow man." *Id.* at 5-6. The book also discusses the apparent contradictions of teaching a technique that develops compassion to people whose work requires killing other people, one-on-one. *Id.* at 50, *passim*.

Some judges order convicted criminals, as a condition of probation, to attend classes in Transcendental Meditation. Joe Stange, *Judges Order Criminals to Meditate as a Condition of Probation*, *ST. LOUIS POST-DISPATCH*, June 10, 2001 at C7.

17. Examples include the University of Massachusetts Medical School in Worcester (Memorandum from Saki Santorelli to 1st and 2nd year Medical Students at the University of Massachusetts-Worcester (April 4, 2000)); Thomas Jefferson University (Philadelphia) (*JEFFERSON MEDICAL COLLEGE, SOPHOMORE SEMINAR, STRESS MANAGEMENT FOR MEDICAL STUDENTS: A COURSE IN MINDFULNESS* (n.d.); DIANE REIBEL, *STRESS MANAGEMENT FOR MEDICAL STUDENTS* (Syllabus, n.d.); Interview with Diane Reibel, Professor, Thomas Jefferson Medical College, in Worcester, Mass. (Apr. 8, 2000)). Professor Reibel was scheduled to offer a similar course to residents in Fall 2000. Interview with Diane Reibel, Professor, Thomas Jefferson Medical College, in Worcester, Mass. (May 5, 2000). Courses have also been offered at the University of Arizona. See Shauna L. Shapiro et al., *Effects of Mindfulness-Based Stress Reduction on Medical and Premedical Students*, 21 *J. BEHAVIORAL MED.* 581, 585 (1998). Most such courses are based on the Mindfulness-Based Stress Reduction (MBSR) model developed at the University of Massachusetts Medical Center by Jon Kabat-Zinn and his colleagues, which is fully described in *KABAT-ZINN, FULL CATASTROPHE*, *supra* note 10.

The residency program at the Cook County Hospital in Chicago includes similar training for a limited number of residents each year. E-mail from David Goldberg, M.D., Medical Director, General Medicine Clinic, Cook County Hospital, to Leonard L. Riskin (Feb. 7, 2001) (on file with author). Offerings such as these are consistent with recent proposals for medical schools to promote healing by helping medical students improve their well-being and self-awareness. In the words of Dennis H.

professional schools.<sup>18</sup>

Various motives impel sponsors and participants in such efforts. These motives range from relief of stress through improvements in concentration, self-awareness, and empathy, to spiritual enlightenment.<sup>19</sup> Alice Walker, the Pulitzer-Prize-winning novelist, says that meditation helped her write on the most difficult topics, raise her child, and deal with the aftermath of a divorce.<sup>20</sup> Basketball coach Phil Jackson used mindfulness meditation in part to help the Chicago Bulls learn that “selflessness is the heart of teamwork.”

This isn't always an easy task in a society where the celebration of ego is the number one national pastime. Nowhere is this more true than in the hothouse atmosphere of professional sports. Yet even in this highly competitive world, I've discovered that when you free players to use *all* their resources—

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Novack, M.D., and his colleagues: “Healing involves physicians’ using themselves as diagnostic and therapeutic instruments, and self-awareness facilitates this process by making available to the physician ‘tacit knowledge’ tapped from personal emotions, experience, and perceptions.” Dennis H. Novack et al., *Toward Creating Physician-Healers: Fostering Medical Students’ Self-Awareness, Personal Growth, and Well-Being*, 74 *ACADEMIC MEDICINE* 516, 517 (1999).

One medical school professor has written about the capacity for poetry to exemplify and foster mindfulness in medical practice. Julie Connelly, *Being in the Present Moment: Developing the Capacity for Mindfulness in Medicine*, 74 *ACAD. MED.* 420 (1999). In fact poetry is commonly used in mindfulness meditation training in the U.S.

18. The development of many of these courses was supported by the Contemplative Practice Fellowship Program, which was founded by the Center for Contemplative Mind in Society (CCMS), the Nathan Cummings Foundation and the Fetzer Institute in 1996 and is administered by the American Council of Learned Societies. See FREDERICK BUELL, REPORT ON THE CONTEMPLATIVE PRACTICE FELLOWSHIP PROGRAM (1999). Since 1997, the program has awarded fellowships to full-time professors in fields as diverse as religious studies, history, physics, dance, and music. See *id.* Three of the Fellowships supported courses that included mindfulness meditation at U.S. law schools, which I discuss later in this article. See *infra* Section IV.A.

The program’s objective, in the words of CCMS director Mirabai Bush, is “to stimulate academic course development in the study of contemplative practice from a variety of disciplinary perspectives. This is part of a broader strategy for revealing the hidden history of contemplation and creating legitimacy for contemplation in the wider culture.” BUELL, *supra*, at 5. According to Buell, the idea of the program was to “support the study of contemplation not just as a category of religious and cultural practice but as a method for developing concentration and deeper understanding—in particular, as a means of intellectual and pedagogical revitalization and change.” *Id.* In this program, contemplative practices refer to “various forms of meditation, such as centering prayer, mindful sitting and other mindful actions; focused experience in nature; and certain artistic practices.” *Id.*

19. For discussions of goals and outcomes of mindfulness meditation, see *infra* Part III.

20. See Alice Walker, *After 20 Years, Meditation Still Conquers Inner Space*, N.Y. TIMES, Oct. 23, 2000, at E1.



mental, physical, and spiritual—an interesting shift in awareness occurs. When players practice what is known as mindfulness—simply paying attention to what’s actually happening—not only do they play better and win more, they also become more attuned with each other. And the joy they experience working in harmony is a powerful motivating force that comes from deep within, not from some frenzied coach pacing along the sidelines, shouting obscenities.<sup>21</sup>

Although mindfulness meditation can have many uses, I wish to focus on how it can help law students and lawyers address two related problems that many of them face. The first concerns high levels of unhappiness, stress, and depression among lawyers and law students. The second concerns the tendency of some lawyers to miss opportunities to provide the most appropriate service to some clients.<sup>22</sup> These problems, although they have many causes, stem in part from certain narrow, adversarial mind-sets that tend to dominate the way most lawyers think and most legal education is structured.<sup>23</sup> Although these mind-sets have great strengths, they also have drawbacks. They tend to promote egocentric behavior, excessive adversarialism, and a lack of balance between personal and professional aspects of life, which often lead to unhealthy levels of stress, to experiences of isolation, emptiness, and absence of meaning, and to the rendering of inadequate or inappropriate services.<sup>24</sup>

Individual lawyers and organizations of the profession have responded to such problems in a wide variety of ways. Many lawyers and law students have dropped out.<sup>25</sup> Professional organizations have promoted CLE programs on stress, time management<sup>26</sup> and

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21. JACKSON & DELEHANTY, *supra* note 9, at 5. For an elaboration of Jackson’s philosophy and methods of introducing mindfulness and other spiritual practices to the Bulls, see *id.* at 67, 118-20, *passim*. He continued using such methods, including silent basketball practice, when he began coaching the Los Angeles Lakers in 1999. See JACKSON & ROSEN, *supra* note 9; David Shields, *The Good Father*, N.Y. TIMES MAG., Apr. 23, 2000, at 58; Mark Rowland, *Sports Guru Phil*, L. A. MAG., June 2000, at 60. Jackson also used meditation to enhance the Lakers’ ability to concentrate, in particular while watching game tapes. JACKSON & ROSEN, *supra* note 9, at 279.

22. See *infra* Part I.A-B.

23. See *infra* text accompanying note 54.

24. See *infra* notes 56-64 and accompanying text.

25. See DEBORAH L. ARRON, *RUNNING FROM THE LAW: WHY GOOD LAWYERS ARE GETTING OUT OF THE LEGAL PROFESSION* (1989) [hereinafter *ARRON, RUNNING*]; Robert Kurson, *Who’s Killing the Great Lawyers of Harvard?*, *ESQUIRE*, Aug. 2000, at 82; Phyllis Brasch Librach, *Ill-Suited*, *ST. LOUIS POST-DISPATCH*, Oct. 23, 1989, at N1.

26. See Ellen Lieberman, *Professional Responsibility and Continuing Legal Education*, N.Y. STATE B.J., May-June 1997, at 16; Nora C. Porter, *Keeping Your Balance*, *PA. LAW.*, Nov.-Dec. 1997, at 14.

professionalism (or civility) and have offered “lawyer assistance” programs.<sup>27</sup> Many law schools make counseling or psychotherapy available to students and faculty.

In addition, both lawyers and law professors have promoted “comprehensive” approaches that would “humanize” or broaden legal education or law practice.<sup>28</sup> These include some forms of mediation and negotiation, “collaborative lawyering,” “problem-solving,” and therapeutic jurisprudence.<sup>29</sup> Although these and similar efforts have gathered much support in recent years, they remain at the periphery of the profession, unfamiliar—if not incomprehensible—to the vast bulk of lawyers and law students who remain firmly in the grip of adversarial mind-sets.<sup>30</sup>

In this article, I describe two ways in which mindfulness can assist the legal profession in addressing some of the problems mentioned above: (1) helping lawyers feel and perform better in general, and (2) weakening the dominance of adversarial mind-sets, enabling some lawyers to make more room for—and act from—broader and deeper perspectives, thereby providing more appropriate service (especially through better listening and negotiation) and gaining more personal satisfaction from their work. Part I of this article describes a number of problems associated with law school and law practice. Part II sets forth a variety of ways in which lawyers, law schools, and professional organizations have tried to address these problems. Part III details the nature and effects of mindfulness meditation. And Part IV discusses recent programs introducing mindfulness meditation to the legal profession and the potential benefits of mindfulness meditation to lawyers and law students. It also examines possible concerns that mindfulness meditation might threaten values and practices that are important to the profession and the legal system.

#### I. SOME PROBLEMS IN THE LEGAL PROFESSION: DISSATISFACTION AND MISSED OPPORTUNITIES

Although many problems face the legal profession, I will focus on two that I believe mindfulness meditation can help alleviate: (1) high levels of dissatisfaction and related negative mental and physical states among law students and lawyers; and (2) a tendency among

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27. A.B.A. COMMISSION ON IMPAIRED ATTORNEYS, 1996 SURVEY OF LAWYER ASSISTANCE PROGRAMS (1996).

28. See *infra* text accompanying notes 92-93.

29. See *infra* notes 79-91 and accompanying text.

30. See *infra* note 56-64 and accompanying text.

some lawyers to miss opportunities to provide needed services to their clients.

#### A. *Lawyer Dissatisfaction*

Law students and lawyers tend to be unhappy in their work.<sup>31</sup> Large percentages of lawyers experience high levels of depression and other symptoms of mental illness.<sup>32</sup> The most prominent reasons are that law schools tend to over-emphasize analytical reasoning at the expense of developing interpersonal skills,<sup>33</sup> and they incline students to seek satisfaction from external sources—such as “winning” in general, and especially through grades, awards, and prestigious jobs—rather than from internal sources, such as a secure sense of self.<sup>34</sup> Thus, many law students lose their idealism and self-confidence and feel isolated from others<sup>35</sup> and separated from their own values.<sup>36</sup>

Lawyers have higher rates of depression and anxiety, divorce, and substance abuse than the general population and members of other professions.<sup>37</sup> One study showed that thirty-three percent of Washington state lawyers experienced depression or abused alcohol

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31. See Deborah L. Rhode, *The Profession and Its Discontents*, 61 OHIO ST. L.J. 1335 (2000) [hereinafter Rhode, *Discontents*].

32. Amiram Elwork & G. Andrew H. Benjamin, *Lawyers in Distress*, 23 J. PSYCHIATRY & L. 205, 206 (1995).

33. See G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 250 [hereinafter Benjamin et al., *Role of Legal Education*]. Benjamin and his colleagues concluded that before they entered law school, this group did not differ significantly from the general population on mental health measures. However, in 20-40% of each class studied, the law school experience elevated symptoms such as “obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation)” and the levels did not decrease during the first two years of practice. *Id.* at 246. Heavy workloads, time-management problems, and high student-faculty ratios also contributed. *Id.* at 248-49. See also Connie J. A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1 (1995-96); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1375-85 (1997).

34. See Krieger, *supra* note 1; Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027 (1998).

35. See Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 274-75 (1979).

36. See Note, *supra* note 34, at 2029.

37. See Daicoff, *supra* note 33, at 1347.

or cocaine.<sup>38</sup> At least in some practice areas, lawyers have lower levels of satisfaction with their work than other professionals.<sup>39</sup> Many complain of difficulty in balancing their work and family lives.<sup>40</sup>

Commentators have identified a variety of reasons for the despair that currently afflicts many lawyers. Professor Susan Daicoff, for instance, sees a “tripartite crisis” in the profession: a decline in professionalism and civility (which some have attributed to increasingly adversarial attitudes, heightened competitiveness, greater focus on money, decreased loyalty to firms—among both attorneys and clients—and a general decline in values);<sup>41</sup> dissatisfaction with work; and the low esteem in which the public holds the profession.<sup>42</sup> A number of commentators have implicated an absence of a sense of meaning or other failings in the inner life. Professor Mary Ann Glendon has written:

Beneath intensified pressures attributable to competition, however, simmers a deeper misery rooted in meaning. The stories lawyers told themselves about professionalism were not just self-serving facades. They were efforts to answer Holmes’ question of questions (by no means unique to lawyers): does all this “make out a life”? But the old incantations aren’t as comforting as they once were. Routinization has increased the drudgery that has always been inherent in most legal work. Many lawyers are suffering alienation akin to that experienced by manual laborers whose crafts were superseded by mass production.<sup>43</sup>

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38. G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT’L J.L. & PSYCHIATRY 233, 242 (1990) [hereinafter, Benjamin et al., *The Prevalence of Depression*.]

39. See Daicoff, *supra* note 33, at 1346-47; Patrick J. Schiltz, *On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 882-83 (1999). But see Kathleen E. Hull, *Cross-Examining the Myth of Lawyers’ Misery*, 52 VAND. L. REV. 971 (1999) (disputing Schiltz’ contention that lawyers tend to be unhappy); Aric Press, *The Good Life*, AM. LAW., June 1999, 75 (reporting on a survey that showed partners in large law firms tend to be happy).

40. See Schiltz, *supra* note 39, at 890.

41. See Daicoff, *supra* note 33, at 1342-44. For an analysis emphasizing the importance of competition for money within and between firms, see T.Z. Parsa, *The Drudge Report*, N.Y. MAG., June 21, 1999, at 24.

42. See Daicoff, *supra* note 33, at 1345-46. For a discussion of public mistrust of lawyers as illuminated by lawyer jokes, see Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 U. CIN. L. REV. 805 (1998).

43. MARY ANN GLENDON, *A NATION UNDER LAWYERS* 90 (1994). She continues: How can we maintain that we belong to a “learned calling” when so many of us are so narrowly specialized that we work on only one part of a large task? How can we claim to be learned in a broader sense when long hours scarcely leave us time to read a novel or attend a concert? The traditional claim that

Professor Joseph Allegratti depicts a “crisis of meaning”<sup>44</sup> and an absence of spirituality.<sup>45</sup> Yale Law School Dean Anthony Kronman argues that many lawyers today believe that law practice cannot offer “fulfillment to the person who takes it up.”<sup>46</sup> Legal journalist Steven Keeva points out “glaring omissions” in the legal culture, such as “[c]aring, compassion, a sense of something greater than the case at hand, a transcendent purpose that gives meaning to your work.”<sup>47</sup> He believes that much of the sadness that afflicts lawyers comes from their sense of separation—from their selves, from their clients, from their law firms, from their friends and family, from “life as people live it” and from “the law as an expression of self in the world.”<sup>48</sup> Professor Lawrence Krieger makes clear the importance of one’s psychological perspective:

Certainly circumstances contribute greatly to one’s life situation, but one’s attitudes, clarity of thinking, level of self-regard, and capacity for choice and action are more determinative of one’s quality of life. . . . Much of our discomfort is a byproduct of assumptions and attitudes commonly shared within the law school and attorney communities. These assumptions revolve in significant part around the notions that only the “best” will reliably find success in their lives, and that performance and appearances are crucially important. Such beliefs undermine the ability to have satisfying and healthy lives as lawyers by generating stress and anxiety as baseline life experiences for many of us. They facilitate our disconnection from a sense of ourselves as inherently worthwhile people, and encourage us to ignore our personal needs, feelings, and conscience in favor of seemingly

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we pursue our livelihood “in the spirit of public service” often has a hollow ring.

*Id.* Lawyer-psychologist Benjamin Sells asserts that the law and legal culture can have a numbing effect on the lawyer’s soul. BENJAMIN SELLS, *THE SOUL OF THE LAW* (1994).

44. JOSEPH G. ALLEGRETTI, *THE LAWYER’S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* 3-4 (1996).

45. Allegratti defines spirituality as an “attentiveness to the presence of the sacred in our life.” *Id.* at 5.

46. ANTHONY T. KRONMAN, *THE LOST LAWYER* 2 (1993).

47. STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* 11 [hereinafter KEEVA, *TRANSFORMING PRACTICES*]. Physician-lawyer Nora C. Porter argues that “values, relationships and meaning” are missing from law practice. See Nora C. Porter, *Toward Quality of Life in the Law*, *PA. LAW.*, Jan.-Feb. 2000, at 12, 16.

48. KEEVA, *TRANSFORMING PRACTICES*, *supra* note 47, at 15. See also Daicoff, *supra* note 33, at 1346 n.29.

more “practical” matters (such as production, performance, income or image).<sup>49</sup>

### B. *Missed Opportunities*

The unhappiness and associated symptoms described above have repercussions beyond the lawyers affected by them. They may impair lawyers’ productivity<sup>50</sup> and interfere with their relations with others, including family members, practice associates, and clients. Such problems may also contribute to the second major problem—that many lawyers tend to miss opportunities to provide the most appropriate service to clients. Many clients—especially those involved in disputes springing from accidents, contracts, or divorces—are unhappy about what brings them to the lawyer’s office. People on both sides commonly experience physical or emotional pain, anger, guilt, remorse, regret, frustration, and hatred of their circumstances. Often, clients have needs and interests that cannot be addressed through litigation or through an adversarial perspective. All too frequently, however, lawyers fail to learn about or try to satisfy their clients’ real needs. Instead, they “transform” complex, human situations into a dry set of facts that fit into legal rules.<sup>51</sup> When this happens, lawyers may miss opportunities to serve their clients<sup>52</sup> and themselves.

Although many factors impair the happiness of lawyers and their abilities to provide appropriate service to their clients, I will focus principally on one—limiting mind-sets. I have already mentioned one such mind-set—the pervasive perspective that causes many lawyers and law students to focus on external, rather than internal, sources of satisfaction.<sup>53</sup> Twenty years ago, I tried to encapsulate a related mind-set—also common among lawyers, law professors and law students—with the metaphor of the “Lawyer’s Standard Philosophical Map.”

What appears on the map is determined largely by the power of two assumptions about matters that lawyers handle: (1) that disputants are adversaries—i.e., if one wins, the other must

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49. Krieger, *supra* note 1, at 7.

50. See Paul R. Verkuil et al., *Countering Lawyering Unhappiness: Pessimism, Decision Latitude and the Zero-Sum Dilemma*, Soc. Sci. Research Network, at 6, available at [http://papers.ssrn.com/paper.taf?abstract\\_id=241942](http://papers.ssrn.com/paper.taf?abstract_id=241942) (September 2000).

51. Carrie J. Menkel-Meadow, *The Transformation of Disputes by Lawyers: What the Dispute Paradigm Does and Does Not Tell Us*, 1985 Mo. J. DISP. RESOL. 25, 26.

52. See *id.* at 34-35.

53. See *supra* text accompanying note 34.

lose—and (2) that disputes may be resolved through application, by a third party, of some general rule of law . . . .

On the lawyer's standard philosophical map . . . the client's situation is seen atomistically; many links are not printed. The duty to represent the client zealously within the bounds of the law discourages concern with both the opponent's situation and the overall social effect of a given result.

Moreover, on the lawyer's standard philosophical map, quantities are bright and large while qualities appear dimly or not at all. When one party wins, in this vision, usually the other party loses, and, most often, the victory is reduced to a money judgment. This "reduction" of nonmaterial values—such as honor, respect, dignity, security and love—to amounts of money, can have one of two effects. In some cases, these values are excluded from the decision maker's considerations, and thus from the consciousness of the lawyers, as irrelevant. In others, they are present but transmuted into something else—a justification for money damages . . . . The lawyer's standard world view is based upon a cognitive and rational outlook. Lawyers are trained to put people and events into categories that are legally meaningful, to think in terms of rights and duties established by rules, to focus on acts more than persons. This view requires a strong development of cognitive capabilities, which is often attended by the under-cultivation of emotional faculties.<sup>54</sup>

This perspective has its virtues, of course,<sup>55</sup> but it also carries problems. It severely limits a lawyer's ability to see things broadly or deeply, to develop curiosity, to listen fully to clients and others, to learn about people's underlying interests, and to think creatively. And it seems to render irrelevant attempts at self-understanding or

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54. Leonard L. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 44-45 (1982) [Hereinafter, Riskin, *Mediation and Lawyers*]. Of course this map is overdrawn; it exaggerates a common tendency. Many lawyers practice in more balanced ways. And transactional lawyers tend more often to draw on wider perspectives. But as I said twenty years ago, it describes the way most lawyers think most of the time. *Id.* at 46. Other limiting mind-sets also contribute to the problems I describe. See, e.g., ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 9-91 (2000) (describing limiting mind-sets associated with client counseling and negotiation).

55. It seems congruent with the personalities of most lawyers, who may be drawn to the law because of this map and the ability of control that it appears to give them. It is consistent with expectations of most clients and often helps achieve the kind of results they anticipate in an adversary system. It also generally redounds to the economic benefit of lawyers, and often of clients. In addition, it gives the appearance of clarifying the law and making it predictable. And finally, it accords with widely-shared assumptions that we will achieve the best society, or the optimal production and distribution of goods and services, by giving individual self-interest full expression. See Riskin, *Mediation and Lawyers*, *supra* note 54, at 47.

at seeking out, or even noticing, what connects people (in addition to what separates them). Thus, it may contribute to many problems in law practice and in the legal system—such as excessive adversarialism, inadequate solutions, high costs, delays, and dissatisfaction among both lawyers and clients—all of which produce suffering.<sup>56</sup>

This mind-set can encourage or support greed<sup>57</sup> and a preoccupation with self, which also can cause suffering.<sup>58</sup> The difficulties associated with the lawyer's standard philosophical map do not stem merely from its existence. The problem is its *dominance*; it crowds

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56. Many of these problems are well illustrated in BARRY WERTH, *DAMAGES* (1998), an extensive case study of a lawsuit arising out of the birth of a brain-damaged child. The book tells the story from the perspectives of the people most extensively involved in the case—the parents, the defendant physician, the many lawyers, and three mediators. Almost all the professionals involved seemed to have ignored the oft-expressed needs of the parents for some recognition of the extent to which they endured adversity, and triumphed over it.

57. See GLENDON, *supra* note 43 at 30, 59, 81-82, *passim*.

At base, this way of looking at the world emphasizes the primacy of the individual. An excessive preoccupation with a narrow sense of self can produce or support desires and conduct that may be inconsistent with (or interfere with our ability to address) our deeper needs, such as needs for connection—with ourselves, with others—and for a sense of meaning. It also can contribute to poor judgment. Of course, concern for self is natural and essential to human existence. But an unwise or excessive or unbalanced concern for self (or egoism) can exacerbate certain normal cravings, and this can cause great suffering—for lawyers, clients, opposing parties and lawyers, and others who may be affected by the lawyers' work. A lawyer (or law student) with exceedingly strong self-esteem needs might, for instance, develop excessive desires for money, power, or recognition that could impair her ability to find the most fulfilling work for herself and provide the most appropriate service to her clients. See *infra* notes 217-26 and accompanying text.

Professor Donald Langevoort has explored the largely unacknowledged possible effects of ego in law practice. Donald C. Langevoort, *Ego, Human Behavior and Law*, 81 VA. L. REV. 853 (1995). In his view, extremely high ego-needs may cause lawyers to deflect ego-threatening information; produce excessive optimism and a false belief that one has control; indulge in incorrect assumptions that others share your beliefs; and engage in status-seeking. All of these, of course, interfere with the exercise of good judgment.

58. See Langevoort, *supra* note 57. They might, for instance, choose practice settings that enhance cravings for money, power or recognition; and such cravings, unless balanced by self-awareness and compassion for self and others, can produce suffering on their own. In addition, they can lead to overwork, which, in turn, can lead to other common sources of suffering among lawyers: stress, poor health, substance abuse, and inadequate attention to other aspects of life, such as family, friendships, hobbies, community activities or service, and spiritual development. See Porter, *supra* note 26, at 12. A recent Boston Bar Association Report emphasized the balance issue: "Many law students, law firm associates and partners currently believe that being a successful partner or associate in private practice is incompatible with daily involvement in family life." BOSTON BAR ASS'N TASK FORCE ON PROFESSIONAL CHALLENGES AND FAMILY NEEDS, *FACING THE GRAIL* (1999) available at <http://www.bostonbar.org/>.



out other perspectives, thus exerting a power that is disproportionate to its utility. The traditional mind-set provides a constricted vision of legal problems and human relations that rests on separation and autonomy, on rights and rules. Thus, it contrasts with mind-sets grounded on connection, relationship, and duty.<sup>59</sup> And mind-sets can affect a lawyer's understanding and performance in virtually any task.<sup>60</sup>

Largely because of the dominance of the Lawyer's Standard Philosophical Map, lawyers often miss opportunities for uncovering and addressing their clients' real needs. Too frequently, for instance, lawyers fail to encourage the client to talk about what is really at stake for him in the dispute.<sup>61</sup> This makes it difficult for the lawyer to consider the client's true needs when the lawyer is counseling the client, negotiating, selecting or carrying out a dispute resolution process, or drafting documents, and it can lead to missed opportunities for creating value.<sup>62</sup> For instance, a lawyer with such a restricted mind-set, in representing a corporation in a breach of contract claim against another corporation, might focus entirely on the facts that are relevant to the legal action. If that happens, the lawyer might miss opportunities to address real needs of the client, such as increasing its profits, protecting its reputation, or improving particular aspects of its performance. And such needs might be addressed through planning and negotiation processes that could lead to new business relationships or new understandings about each organization's performance or about the interactions between employees of the two organizations.<sup>63</sup> But narrow, legalistic perspectives would preclude such processes. Thus, such perspectives sometimes make it impossible for people in dispute to heal, or even improve, their relations, and

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59. See CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982); Leonard L. Riskin, *The Represented Client in a Settlement Conference: The Lessons of G. Heileman Brewing Co. v. Joseph Oat Corp.*, 69 WASH. U. L.Q. 1059, 1075-81, 1086 (1991) [hereinafter Riskin, *Represented Client*].

60. See Ellen C. Dubois et al., *Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFF. L. REV. 11 (1984); Carrie Menkel Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985); Riskin, *Represented Client*, *supra* note 59, at 1075-87.

61. See ROBERT F. COCHRAN, JR. ET AL., *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 14-17 (1999); MNOOKIN ET AL., *supra* note 54, at 169; LEONARD L. RISKIN & JAMES E. WESTBROOK, *DISPUTE RESOLUTION AND LAWYERS* 86-95 (2d ed. 1997); Warren Lehman, *The Pursuit of a Client's Interests*, 77 MICH. L. REV. 1078 (1978).

62. See MNOOKIN ET AL., *supra* note 54, at 173-271.

63. See Leonard L. Riskin, *Mediator Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 43 (1996) [hereinafter Riskin, *Grid*].

thereby lead to excessive litigation and related costs, both financial and personal.

In other words, such a narrow, "legalistic" vision of human relations and the role of lawyers often deprives clients of the kind of service they need. It also stands in the way of connections between a client and his lawyer. Thus, it tends to deprive lawyers of the kinds of satisfaction that can come from developing deeper connections with clients and helping clients resolve problems in ways that respond to their real needs.<sup>64</sup>

## II. ATTEMPTS TO ADDRESS THESE PROBLEMS

Of course, many lawyers and law students find their own ways to cope with the stresses of law practice,<sup>65</sup> deeply enjoy their lives and their work, and render excellent service. Still, large numbers have left the profession for situations they consider more satisfying or less demanding.<sup>66</sup> Many others have stayed in the profession but have tried to shift the nature or focus of their work—generally toward more collaborative forms of practice or mediation or arbitration.<sup>67</sup>

The profession itself has responded in various ways to different aspects of these problems. The organized bar has created Lawyer Assistance Programs to provide counseling and other support to lawyers

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64. Paul Verkuil, Martin Seligman and Terry Kang have written: "Not surprisingly, the practice of law, as it exists today, is tied up with a large number of zero-sum games. This produces predictable emotional consequences for the practitioner, who will be anxious, angry and sad much of the time." Paul R. Verkuil et al., *supra* note 50, at 16. They argue that we should promote cooperative behavior among lawyers, partly because "cooperation makes lawyers themselves happier and more successful." *Id.* at 19.

An observation made by Gandhi would support their contention. Gandhi relates that after he persuaded his victorious client to agree to accept installment payments instead of a lump sum, which the defendant would have been unable to deliver:

[b]oth were happy over the result, and both rose in public estimation. *My joy was boundless.* I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder.

MOHANDAS GANDHI, AUTOBIOGRAPHY, THE STORY OF MY EXPERIMENTS WITH TRUTH 168 (1948).

65. One of the many recent articles on this topic noted a trend toward bringing dogs to the law office, partially to relieve stress. Jill Schachner Chanen, *Amicus Canine*, 86 A.B.A. J. 85 (2000).

66. See *supra* note 25.

67. See, e.g., Jenny B. Davis, *Life in Question: How Five Lawyers Worked Out Answers of Their Own*, A.B.A. J., May 2001, at 52, 56 (Frederic K. 'Jerry' Conover of Faegre & Benson in Denver describing his transition from adversarial law practice to mediation and arbitration).

who are in psychological crises or are abusing alcohol or drugs.<sup>68</sup> CLE requirements for training in professionalism have appeared.<sup>69</sup> Bar publications are stuffed with articles about quality of life for lawyers, most of which encourage balance.<sup>70</sup> Books and seminars on how lawyers can leave the profession<sup>71</sup> or find their way in it<sup>72</sup> have proliferated. Law firms offer sabbaticals,<sup>73</sup> alternative work arrangements,<sup>74</sup> and mentoring.<sup>75</sup> Some lawyers serve as “coaches” to other lawyers.<sup>76</sup> Lawyers and law professors conduct explorations and deliver exhortations about how to enhance “professionalism” through training and law school education or changes in the structure of law practice.<sup>77</sup> Law schools commonly provide psychological counseling services and workshops.

Leaders in the legal community have called for a return to older visions of the lawyer. Yale Law School Dean Anthony Kronman, for example, trumpets the virtues of the nineteenth-century ideal of the “lawyer-statesman,” a person of good judgment and “prudence or

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68. See ABA COMMISSION ON IMPAIRED ATTORNEYS, *supra* note 27; Andrew H. Benjamin, et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 LAW & PSYCHOL. REV. 113 (1992); Geoff Yuda, *Competition: Just Part of the 'Business'?*, PENN. LAW., Jan.-Feb. 2001, at 28, 32-34. Some bar associations also have established mentoring programs. *Id.* at 34.

69. At least twenty states have mandatory CLE requirements on professionalism. See Frank X. Neuner, Jr., *Mandatory Professionalism: A Cure for an Infectious Disease*, 45 LA. B.J. 18, 18 (1997); Lisa A. Grigg, *The Mandatory Legal Education (MCLE) Debate: Is it Improving Lawyer Competence or Just Busy Work?*, 12 BYU J. PUB. L. 417, 429 (1998).

70. See, e.g., Carl Horn, *Twelve Steps Toward Personal Fulfillment in Law Practice*, LAW PRAC. MGMT., Oct. 1999, at 36; Porter, *supra* note 47, at 12. For a general guide, see AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* (1995).

71. See ARRON, RUNNING, *supra* note 25; DEBORAH ARRON, *WHAT CAN YOU DO WITH A LAW DEGREE?* (1999) [hereinafter ARRON, WHAT?].

72. See, e.g., GEORGE KAUFMAN, *THE LAWYER'S GUIDE TO BALANCING LIFE AND WORK: TAKING THE STRESS OUT OF SUCCESS* 229 (1999) (based on workshops Kaufman gives for lawyers); GERALD LEVAN, *LAWYERS' LIVES OUT OF CONTROL: A QUALITY OF LIFE HANDBOOK* (1992).

73. Bruce Balestier, *Shearman Associates Like their Time Off: Fifth-And Sixth-Years Praise Sabbatical Idea*, N.Y. L.J. June 2, 2000, at 24.

74. Deborah Epstein Henry, *The Case for Flex-Time and Part-Time Lawyering*, PA. LAW., Jan.-Feb. 2001, at 42.

75. See Porter, *supra* note 47, at 15. Of course many firms also are raising associate salaries dramatically. Renee Deger, *Spark in Salary Wars?*, LEGAL TIMES, Jan. 22, 2001, at 21.

76. See Steven Keeva, *Passionate Practitioner*, A.B.A. J., June 2000, at 56, 60 (describing the coaching work of Dallas lawyer John McShane) [hereinafter Keeva, *Passionate Practitioner*].

77. See, e.g., Rhode, *Discontents*, *supra* note 31; Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283 (1998).

practical wisdom.”<sup>78</sup> He suggests the need for a special kind of ability to deliberate, which includes both compassion and detachment.<sup>79</sup> In addition, “new” approaches to law school and lawyering, intended to address some of the problems in the profession described above, are proliferating and gaining much attention in the world of law schools and in corners of law practice. They bear names such as therapeutic jurisprudence;<sup>80</sup> preventive law;<sup>81</sup> holistic lawyering;<sup>82</sup> interest-based negotiation (sometimes called problem-solving, collaborative, or integrative);<sup>83</sup> collaborative law;<sup>84</sup> lawyering with an ethic of

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78. KRONMAN, *supra* note 46, at 5.

79. *Id.* at 72.

80. Therapeutic jurisprudence looks at law from the standpoint of its psychotherapeutic effects and seeks to encourage laws and practices that will have beneficial impacts. See DAVID B. WEXLER & BRUCE WINICK, *LAW IN A THERAPEUTIC KEY* (1996); PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION (Dennis P. Stolle et al. eds., 2000) [hereinafter PRACTICING THERAPEUTIC JURISPRUDENCE.].

81. See LOUIS M. BROWN & EDWARD A. DAUER, *PLANNING BY LAWYERS: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS* (1978); ROBERT M. HARDWAY, *PREVENTIVE LAW: MATERIALS ON A NON ADVERSARIAL LEGAL PROCESS* (1997). Recently, commentators have sought to integrate Therapeutic Jurisprudence and Preventive Law. Andrea K. Schneider, *The Intersection of Therapeutic Jurisprudence, Preventive Law, and Alternative Dispute Resolution*, 5 PSYCHOL., PUB. POL'Y & L. 1084 (1999); Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, in PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 80, at 5; Ellen A. Waldman, *Substituting Needs for Rights in Mediation: Therapeutic or Disabling?*, 5 PSYCHOL., PUB. POL. & L. 1103 (1999).

82. William van Zyverden, President of the International Alliance of Holistic Lawyers, says that “Holistic Law’ . . . is concerned with the ‘whole’ client: past, present future, body, mind, spirit, and unified field connection to each other an all that is. Our role becomes a sharing of our own humanity as equals, as Spiritual Companions.” William van Zyverden, *Expressing Holistic Law*, THE WHOLE LAWYER (International Alliance of Holistic Lawyers, Middlebury, Vt.), Spring 2000, at 1, 6. The organization’s website is [www.iah.org](http://www.iah.org). For an example of a holistic approach to public defender work, see David E. Rovella, *The Best Defense*, NAT’L L.J., Jan. 31, 2000, at 1.

83. ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (2d ed. 1991); Carrie J. Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 794-842 (1984).

84. Collaborative law is grounded on the agreement that the lawyer will represent the client only in negotiations (generally conducted through meetings that include lawyers and clients) that seek a fair and comprehensive settlement; if the client decides to litigate, the collaborative lawyer facilitates the transition to adversarial counsel. See Pauline H. Tesler, *Collaborative Law: What It Is and Why Lawyers Need to Know About It*, in PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 80, at 187, 199-200; William F. Coyne, Jr., *The Case for Settlement Counsel*, 14 OHIO ST. J. ON DISP. RESOL. 367 (1999); David A. Hoffman & Rita S. Pollak, *Collaborative Law Looks to Avoid Litigation*, 28 MASS. L. W. 1989 (2000).

care;<sup>85</sup> affective lawyering;<sup>86</sup> the lawyer as problem solver;<sup>87</sup> the lawyer as healer;<sup>88</sup> transformative mediation<sup>89</sup> or facilitative-broad mediation;<sup>90</sup> and Restorative Justice.<sup>91</sup>

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85. See Carrie Menkel-Meadow, *Review Essay: What's Gender Got to do with it?: The Politics and Morality of an Ethnic of Care*, 22 N.Y.U. REV. L. & SOC. CHANGE 265 (1996); Susan Daicoff, *The Role of Therapeutic Jurisprudence in the Comprehensive Law Movement*, in PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 79, at 465, 469 n.14 [hereinafter; Daicoff, *Comprehensive Law*].

86. Linda G. Mills, *Affective Lawyering: The Emotional Dimensions of the Lawyer-Client Relation*, in PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 46, at 419.

87. See Janet Reno, *Lawyers as Problem Solvers: Keynote Address to the AALS*, 49 J. LEGAL EDUC. 5 (1999); CPR Advisory Counsel on Legal Education, *Statement and Recommendations on Teaching Problem Solving in the Law School Curriculum*, ALTERNATIVES TO HIGH COST LITIG., May 2000, at 2; Paul Brest & Linda Hamilton Krieger, *Lawyers as Problem-Solvers*, 72 TEMP. L. REV. 811 (1999); Carrie Menkel-Meadow, *The Lawyer as Problem Solver and Third-Party Neutral: Creativity and Non-Partisanship in Lawyering*, 72 TEMP. L. REV. 785 (1999). In 1997, California Western School of Law established the William J. McGill Center for Creative Problem-Solving, "an interdisciplinary think tank and training institute." See [http://www.cwsl.edu/mcgill/mc\\_main.html](http://www.cwsl.edu/mcgill/mc_main.html) (last visited Mar. 11, 2002). The CPR Institute for Dispute Resolution recently established an award competition for professors who have introduced problem-solving into law school curricula. CPR INSTITUTE FOR DISPUTE RESOLUTION, 2001 CPR AWARDS FOR EXCELLENCE IN ADR, CALL FOR 2001 NOMINATIONS (2001).

88. James D. Gordon, III, *Law Review and the Modern Mind*, 33 ARIZ. L. REV. 265, 271 (1991); Gerald R. Williams, *Negotiation as a Healing Process*, 1996 J. DISP. RESOL. 1; Daniel B. Evans, *Helping Clients Heal: Lessons Lawyers Can Teach Clients About Spiritual Growth*, LAW PRAC. MGMT., Oct. 1999, at 42. With the sponsorship of the Fetzer Institute, David Link, former dean of Notre Dame Law School and founding dean of the University of St. Thomas School of Law in St. Paul, is developing a program on Healing and the Law, which plans to release publications and a potential television series. Letter from David T. Link, The Joseph A. Matson Dean and Professor of Law, Notre Dame Law School, to Timothy J. Heinsz, Dean, University of Missouri-Columbia School of Law (June 28, 1999); telephone interview with Paul Ginter, Project Officer, Fetzer Institute (Dec. 18, 2001). The Fetzer Institute's Healing and the Law Program sponsors gatherings that promote law as a healing profession. Email message to Leonard L. Riskin from Paul Ginter, Project Officer, Fetzer Institute (Jan. 1, 2002). In Spring 2001, the Whidbey Institute sponsored a three-day program near Seattle on "Law as a Healing Profession: Seeking Integrity and the Common Good," led by Stella Rabaut, Donald Williamson and Sharon Parks. WHIDBEY INSTITUTE, INSTITUTE NEWS, Spring 2001.

89. ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* (1994); Joseph P. Folger & Robert A. Baruch Bush, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, 13 MEDIATION Q. 263 (1996).

90. Riskin, *Mediation and Lawyers*, *supra* note 54; Riskin, *Grid*, *supra* note 63.

91. See MARK S. UMBREIT, *THE HANDBOOK OF VICTIM OFFENDER MEDIATION: AN ESSENTIAL GUIDE TO PRACTICE AND RESEARCH* (2001); David Lerman, *Forgiveness in the Criminal Justice System: If it Belongs, Then Why is it so Hard to Find?*, 27 FORDHAM URB. L.J. 1663 (2000); David Lerman, *Restoring Justice*, TIKKUN, Sept./Oct. 1999, at 13.

Professor Susan Daicoff considers many of these approaches, and a few others, “vectors” in a “comprehensive law movement,”<sup>92</sup> which share a “common goal of a more comprehensive, humane and psychologically optimal way of handling legal matters.”<sup>93</sup> Put another way, proponents of these approaches share an aspiration to base their work in law on a vision that is broader, deeper, fuller, and more complex, subtle, affirmative and constructive than the vision that informs the Lawyer’s Standard Philosophical Map and other adversarial mind-sets. Many of these approaches are meant to supplement adversarial perspectives, not supplant them.<sup>94</sup> As Elizabeth Dvorkin, Jack Himmelstein, and Howard Lesnick said of the humanistic perspective they described in 1980:

The goal of this perspective is not to replace the traditional strengths of the profession but to include them in a larger context. For example, the point is not that concern with human aspirations and values should replace technical mastery and analytic rigor. What is needed is a way of bringing together mastery with aspiration, intellect with experience, rigor with value, pragmatism with idealism, competence and skill with caring and a sense of meaning.<sup>95</sup>

Many of these approaches have found their way into law school education, too. Thus, for example, almost all U.S. law schools now offer courses on client interviewing and counseling that are “client-centered”<sup>96</sup> or “collaborative”<sup>97</sup> or courses on negotiation, mediation,

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92. Daicoff, *Comprehensive Law*, *supra* note 85. Daicoff lists the following as vectors: Therapeutic Jurisprudence, Preventive Law, Therapeutic Jurisprudence/Preventive Law, Restorative Justice, Procedural Justice, Facilitative Mediation, Transformative Mediation, Collaborative Law, Holistic Law, Creative Problem Solving, and Specialized Courts. *Id.*

93. *Id.* at 466.

94. See, e.g., MNOOKIN ET AL., *supra* note 54, at 11-43 (describing tension between creating value and distributing value).

Each of these approaches seeks to promote habits or attitudes of practice that would provide better, fuller, or more humane service than the service some believe the majority of lawyers commonly provide. I believe, however, that many lawyers offer such comprehensive service without consciously subscribing to any of these approaches—or even being aware of them. See GLENDON, *supra* note 43, at 98.

95. ELIZABETH DVORKIN ET AL., *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND LAWYERING* 3 (1981).

96. See ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING COUNSELING AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* (1990); DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS* (1990); THOMAS SHAFFER & JAMES ELKINS, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* (1997).

97. COCHRAN ET AL., *supra* note 61, at 6-9.

or other forms of dispute resolution,<sup>98</sup> many of these courses promote—or at least include—a broad, humanistic focus.<sup>99</sup> Some schools offer courses on or including Preventive Law or Therapeutic Jurisprudence.<sup>100</sup> A group of Stanford Law School courses designed to teach creativity, judgment, problem-solving and alternative dispute resolution has been described as a “complementary curriculum.”<sup>101</sup> An emphasis on humanistic or spiritual aspects of law practice has appeared in some law school courses<sup>102</sup> and clinics.<sup>103</sup> Some law schools have expressly dedicated themselves to infusing

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98. See ABA SECTION ON DISPUTE RESOLUTION, DIRECTORY OF LAW SCHOOL DISPUTE RESOLUTION COURSES AND PROGRAMS (2000); Robert B. Moberly, *Introduction: Dispute Resolution in the Law School Curriculum, Opportunities and Challenges*, 50 FLA. L. REV. 583 (1998).

99. See, e.g., COCHRAN ET AL., *supra* note 61, at 6-9; RISKIN & WESTBROOK, *supra* note 61.

100. Courses that include many of these broad approaches were scheduled to be offered during the 2000-2001 school year by David Wexler (a course called Practicing Therapeutic Jurisprudence at the University of Puerto Rico and the University of Arizona) and Bruce Winick (a course called New Directions in Lawyering at the University of Miami). Susan Daicoff offered a similar course at Florida Coastal University. E-mail from David Wexler, Professor, University of Arizona and University of Puerto Rico Schools of Law, to Paula Lustbader, Professor, University of Seattle School of Law, with copies posted to legaled@mail.law.fsu.edu (July 19, 2000).

101. Paul Brest & Linda Hamilton Krieger, *Lawyers as Problem Solvers*, 72 TEMP. L. REV. 811 (1999); Paul Brest & Linda Hamilton Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527, 532 (1994).

102. See DVORKIN ET AL., *supra* note 94; HOWARD LESNICK, BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW 228-30 (1992); THOMAS L. SHAFFER & ROBERT L. COCHRAN, LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY (1994); Jack Himmelstein, *Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514, 541-43 (1978); Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227, 240, 255-74 (2000). At the University of Houston Law Center, Professors John Mixon and Robert Schuwerk have offered professional responsibility courses that emphasize self-awareness. John Mixon & Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 LAW & CONTEMP. PROBS. 87 (1995). For an overview of possibilities, see Lucia Ann Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167 (2000). Fordham University School of Law recently established the Institute on Religion, Law & Lawyer's Work. E-mail from Amy Uelman, Director, Institute on Religion, Law & Lawyer's Work, Fordham University School of Law, to Leonard L. Riskin (Feb. 16, 2001). Lively discussions of humanistic approaches to legal education appear on the listserv legaled@law.fsu.edu.

103. Calvin G.C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in a Law School Clinic*, 35 WILLAMETTE L. REV. 241 (1999).

law with deeper dimensions, based on religious traditions<sup>104</sup> or public service.<sup>105</sup>

Although these approaches have attracted significant support, they remain very much at the periphery of law practice and law school education.<sup>106</sup> The Lawyer's Standard Philosophical Map still controls the way that most lawyers practice, most of the time. Mindfulness could help loosen that control, as the next part explains.

### III. MINDFULNESS MEDITATION: ITS NATURE AND OUTCOMES

In mindfulness meditation, a person seeks to develop "bare attention," or presence, i.e., to notice, without judging and with equanimity,<sup>107</sup> whatever passes through her awareness—bodily sensations, emotions, sounds and thoughts.<sup>108</sup> The cultivation of this

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104. George Bullard, *Can You Take the High Road and Still Produce New Lawyers?*, DETROIT NEWS, April 10, 1999, at C1; Claudia H. Deutsch, *Private Sector: The Law's Spirit Over Its Letter*, N.Y. TIMES, Aug. 6, 2000, Sec. 3, at 2 (describing the new St. Thomas University School of Law in St. Paul, Minnesota); William Glaberson, *A Law School Where Jesus is the Ultimate Case Study*, N.Y. TIMES, Nov. 25, 1998, at A1 (describing Pepperdine University School of Law); James D. Gordon, III, *The Importance of Religiously Affiliated Law Schools*, 37 CATH. LAW. 183 (1997); Mary C. Scarlato & Lynne Marie Kohm, *Integrating Religion, Faith, and Morality in Traditional Law School Courses*, 11 REGENT U. L. REV. 49 (1998-99).

105. See, e.g., CITY UNIVERSITY OF NEW YORK SCHOOL OF LAW, PHILOSOPHY & MISSION, at <http://www.law.cuny.edu/Apply/philmis/index.html>.

106. See Paul Brest, *Skeptical Thoughts: Integrating Problem Solving Into Legal Curriculum Faces Uphill Climb*, A.B.A. DISP. RESOL. MAG., Summer 2000, at 20; Frank E.A. Sander & Robert H. Mnookin, *A Worthy Challenge: The Teaching of Problem Solving in Law Schools*, A.B.A. DISP. RESOL. MAG., Summer 2000, at 21.

107. In Joseph Goldstein's words, "A mind suffused with equanimity is poised and balanced with whatever may be arising in experience. We feel soft and spacious as things come and go; an equanimous mind does not move reactively at all." JOSEPH GOLDSTEIN, *INSIGHT MEDITATION: THE PRACTICE OF FREEDOM* 14 (1994) [hereinafter, GOLDSTEIN, *INSIGHT MEDITATION*].

108. This article focuses mainly on the form of mindfulness meditation that originated in early Buddhism in India and Southeast Asia. This variety of mindfulness practice, also known as insight meditation or *Vipassana*, is characteristic of Theravadan Buddhism, which is prevalent in Sri Lanka, Thailand, Burma, Laos and Cambodia. Tibetan Buddhism and Zen Buddhism—the latter dominant in East Asia, including China, Korea, and Japan—incorporate, but place less emphasis upon, mindfulness meditation practices. See WALPOLA RAHULA, *WHAT THE BUDDHA TAUGHT* xii (1959); HEINRICH DUMOULIN, *ZEN BUDDHISM: A HISTORY: INDIA AND CHINA* 27 (1988).

Eastern conceptions of mindfulness are sometimes confused or conflated with another notion of mindfulness developed in recent years by Harvard psychology professor Ellen Langer and her colleagues (see ELLEN J. LANGER, *MINDFULNESS* (1989); ELLEN J. LANGER, *THE POWER OF MINDFUL LEARNING* (1997); Ellen J. Langer, *Mindful Learning*, 9 CURRENT DIRECTIONS IN PSYCHOL. SCI. 220 (2000)) that is based entirely on the Western tradition. See, e.g., Ronald M. Epstein, *Mindful Practice*, 282 JAMA 833 (1999). Although there is substantial overlap between the two ideas of mindfulness, there are significant differences as well—the primary one being that Langer's



awareness—formal practice—can be done sitting, standing, walking or moving in other ways, such as in yoga.<sup>109</sup> The sitting practice, which is the most common, usually begins with learning to concentrate by paying attention to one's breathing.<sup>110</sup> Next, the meditator

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mindfulness focuses on thinking, while the Eastern idea of mindfulness stresses a bare awareness, which some have characterized as not thinking. See HENEPOLA GUNARATANA, *MINDFULNESS IN PLAIN ENGLISH* (1992).

It is also important to distinguish mindfulness from the other major form of meditation, known as "concentration." In concentration meditation, the meditator focuses attention exclusively on one object, such as a mantra or an image or a mental state. See GOLEMAN, *THE VARIETIES OF THE MEDITATIVE EXPERIENCE* 7-20 (1977); [hereinafter, GOLEMAN, *VARIETIES OF MEDITATIVE EXPERIENCE*]; GUNARATANA, *supra*, at 3; Kathleen Riordan Speeth, *On Psychotherapeutic Attention*, 14 *J. TRANSPERSONAL PSYCHOL.* 141, 146-48 (1982). In the West, perhaps the most widely-known examples of concentration meditation are Transcendental Meditation, see Charles N. Alexander et al., *Transcendental Meditation, Self-Actualization, and Psychological Health: A Conceptual Overview and Statistical Meta-Analysis*, 6 *J. SOC. BEHAV. & PERSONALITY* 189 (1991), and the method known as the "Relaxation Response," which was developed by Herbert Benson of Harvard Medical School. HERBERT BENSON, *THE RELAXATION RESPONSE* (1975); HERBERT BENSON, *BEYOND THE RELAXATION RESPONSE* (1984); HERBERT BENSON *YOUR MAXIMUM MIND* (1987); HERBERT BENSON & MARG STARK, *TIMELESS HEALING: THE POWER AND BIOLOGY OF BELIEF* (1997). Such forms of meditation can produce states of rapture or calm and a wide variety of other benefits. See Alexander et al., *supra*. For a review of research on the effects of a variety of methods of meditation, see MICHAEL MURPHY & STEVEN DONOVAN, *THE PHYSICAL AND PSYCHOLOGICAL EFFECTS OF MEDITATION* (2d ed. 1996).

109. Meditation training programs in the U.S. almost always include "walking meditation," see, e.g., GOLDSTEIN, *INSIGHT MEDITATION*, *supra* note 107, at 139, and often include yoga. See, e.g., KABAT-ZINN, *FULL CATASTROPHE*, *supra* note 10, at 94-113. In addition they sometimes offer meditations designed to develop certain positive states of mind. See *infra* note 275. Lectures on ethics and morality make up important parts of such programs, too. *Id.*

110. Mindfulness meditation training typically begins with instruction and practice in concentration meditation, in order to develop the powers of concentration, which the student then learns to apply, step-by-step, to sensations, emotions, thoughts and then consciousness itself, culminating in "bare attention." In addition, during mindfulness meditation, as I am using the term, the meditator sometimes alternates between bare attention and concentration on a particular object. Conversely, the mediator also can develop powers of concentration through practicing bare attention. For these and other reasons, the kind of meditation I am describing could be called a hybrid of the two approaches. See GOLEMAN, *VARIETIES OF MEDITATIVE EXPERIENCE*, *supra* note 108, at 109-10. Many teachers encourage students to try to develop mindfulness and concentration simultaneously. JOSEPH GOLDSTEIN, *THE EXPERIENCE OF INSIGHT: A SIMPLE AND DIRECT GUIDE TO BUDDHIST MEDITATION* (1976) [hereinafter GOLDSTEIN, *EXPERIENCE OF INSIGHT*]. Sometimes it is difficult to distinguish a concentration practice from a mindfulness practice. If a meditator focusing on his breath noticed a thought and returned his attention immediately to the breath, that would be concentration. If, instead, the meditator watched the thought arise fall away, and then returned to the breath, that would be mindfulness. Statement of Virginia Morgan, insight meditation teacher (Mar. 22, 2001).

Teachers use a variety of instructions. Here is one that you might want to try. Sit comfortably with your back and neck erect—either on a chair with your feet flat on

gradually expands her awareness to include bodily sensations, emotions, thoughts, and eventually, consciousness itself—or the operation of the mind.<sup>111</sup> This is what came into the awareness of one meditator, as she narrated it to a reporter:

... hearing ... enjoying ... buzzing in my feet ... fear: will my feet be O.K.? ... hearing ... breathing ... wondering: will my parents read this article? ... enjoying ... afraid ... what do you think of me? ... fear ... it's O.K. ... compassion ... butterflies in belly ... fear ... kindness ... compassion ... hearing ... bird, house finch ... naming ... thinking ... joy ...<sup>112</sup>

Any of these thoughts might hook the thinker's attention into a long sequence of worries, reveries, fantasies and emotions linked to the past or future. Of course, it is easy and normal for people—while

the floor, or on the floor with your legs crossed—and your hands on your knees or your thighs. Pay attention to the sensation of your breath as it enters and leaves your nostrils (or to the rising and falling of your abdomen as you breathe in and out). If you have trouble concentrating on your breath, silently count each exhalation until you reach ten; if you lose count, begin again at one. If (when!) your mind wanders, gently return your attention to the breath. Try this for five minutes, then gradually extend the time period up to thirty minutes. Notice how the mind wanders, and its propensity to latch on to—get carried away with—thoughts, feelings, and sensations.

111. Try this: Begin with meditating on the breath, as described in the preceding footnote. Then gradually expand the scope of your awareness to include sounds; simply notice the sounds without judging them. After about five minutes, shift your focus to bodily sensations; again, just notice them, without judging them or trying to hold onto them or get rid of them. After five to ten minutes, shift your focus to feelings, then to thoughts. Next try “bare attention,” opening your awareness to all of these phenomena at once. Throughout this meditation, use your breath as an “anchor”; when you lose track or get caught in any sounds, bodily sensations, feelings, or thoughts, gently return your attention to the breath until you are ready to return to the designated object(s) of attention.

I am presenting these exercises simply to give you a taste. In some meditation retreats, you might spend several days on the breath alone; in some traditions, you might spend years on the breath. For other instructions and a sense of the variety of practices, see generally GOLDSTEIN, *EXPERIENCE OF INSIGHT*, *supra* note 110; GUNARATANA, *supra* note 108; KABAT-ZINN, *FULL CATASTROPHE*, *supra* note 10, at 72-75; JOHN KABAT-ZINN, *WHEREVER YOU GO, THERE YOU ARE* (1994) [hereinafter KABAT-ZINN, *WHEREVER YOU GO*]; JACK KORNFELD, *A PATH WITH HEART: A GUIDE TO THE PERILS AND PROMISES OF SPIRITUAL LIFE* (1993); BREATH SWEEPS MIND: A FIRST GUIDE TO MEDITATION PRACTICE (Jean Smith, ed., 1998).

Teachers of mindfulness also suggest a variety of techniques to help bring mindfulness into daily life. These include ideas such as pausing to watch the breath before answering the phone or while waiting for a traffic light to change; stopping for a few minutes each hour to quietly observe your thoughts and bodily sensations; and making similar observations before beginning an important meeting or before switching from one task to another. See, e.g., Saki Santorelli, *Mindfulness and Mastery in the Workplace: 21 Ways to Reduce Stress During the Workday*, in *THE STRESS REDUCTION AND RELAXATION PROGRAM WORKBOOK* at 24-25 (1998).

112. Jennifer Egan, *Toward Mindfulness: Where Meditation is Going*, N.Y. TIMES MAG., May 7, 2000, at 86.

meditating and in every day life—to get caught up in and attached to such chains of thoughts, feelings, and emotions and their associated bodily sensations. When this happens, however, we lose track of what is going on in the moment. For a lawyer, this can mean thinking about client X while listening to client Y, and not noticing negative thoughts or feelings toward client Y. A law student, while reading *Hadley v. Baxendale* for Contracts, might be worrying about *Pennoyer v. Neff* for Civil Procedure—or anticipating weekend social activities or regretting not going to business school or joining the Peace Corps.<sup>113</sup>

Mindfulness meditation can produce important insights as well as practical benefits. Just as practice drills help basketball players hone their jump-shots, which they can use in games, mindfulness meditation can help people develop an ability to pay attention, calmly, in each moment, which they can apply in everyday life. It enables us to see how our minds work, to experience our lives more fully.

Observing the mind's operation in this way helps us notice the kind of randomness and impermanence revealed in the meditator's narration above. It also can help us break down mental events into their component parts. For instance, a pang of guilt that might arise when we think about the time we forgot a parent's birthday (or missed a significant court-filing date) is just a combination of a habitual thought (e.g., "You've always been worthless and always will be") and a bodily sensation (e.g., a mildly-unpleasant tension in your chest). Through mindfulness practice, we can recognize this as simply one of our habitual reactions to certain kinds of situations. Such recognition can give us the power to watch such phenomena rise and fall away, rather than getting caught up in them. In the same fashion, mindfulness can allow one to observe a variety of impulses and mental and behavioral habits—and decide whether to follow them or pursue other courses. The practice both requires and produces equanimity.<sup>114</sup> Self-understanding and equanimity also can produce compassion for ourselves and an understanding of and compassion for others<sup>115</sup>—and these can lead to a commitment to serve others.<sup>116</sup>

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113. Sometime when you are involved in a conversation, try to notice whenever your attention wanders from the topic at hand.

114. See GOLDSTEIN, *INSIGHT MEDITATION*, *supra* note 107.

115. *Id.* at 147-49; THICH NHAT HANH, *GOING HOME: JESUS AND BUDDHA AS BROTHERS* 33 (1999).

116. JOSEPH GOLDSTEIN, *The Dharma Practice for March 2000*, TRICYCLE, Mar. 2000; SHARON SALZBERG, *LOVING-KINDNESS: THE REVOLUTIONARY ART OF HAPPINESS* 104 (1997).

Mindfulness meditation, in short, is a systematic process of investigation that can affect perceptions and behavior. The Buddha understood the practice as part of a path to relieve suffering and produce happiness.<sup>117</sup> In this view, life involves a great deal of suffering; the cause of suffering is craving; the way to eliminate suffering is to eliminate craving or detach from it; and the way to eliminate or detach from craving is to adopt a series of attitudes and practices involving wisdom, morality and meditation.<sup>118</sup>

The idea that craving causes suffering, or all suffering, requires some elaboration. We crave objects associated with our capacities to hear, see, smell, taste, touch, and think.<sup>119</sup> In other words, we crave things that please the sense organs, such as pretty sights, lovely music, and pleasant odors, tastes, and other bodily sensations; we may crave certain kinds of thoughts.<sup>120</sup> (Sometimes, we even crave craving). And, of course, we feel aversion (a form of craving, with a negative valence) toward, and seek to avoid the unpleasant counterparts of these objects of sense desires.

Seen in this way, craving and aversion arise from wanting things to be other than the way they are. And they often lead people to ignore or avoid thoughts and sensations that seem unpleasant. In this manner, aversion to fear and anxiety can block us from fully experiencing certain "threatening" thoughts and emotions, such as negative judgments about ourselves or others, about our work or family situations, or about a particular position we are taking on behalf of a client; it can obscure our awareness of our true intentions. As a result, such thoughts and intentions and their associated bodily sensations and impulses might indirectly exercise power over us.<sup>121</sup> They might, for instance, produce stress and impair our ability to function. But mindfulness allows us to experience such thoughts, intentions

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117. See JOSEPH GOLDSTEIN, *INSIGHT MEDITATION*, *supra* note 107, at 5.

118. See MATTHEW FLICKSTEIN, *SWALLOWING THE RIVER GANGES: A PRACTICE GUIDE TO THE PATH OF PURIFICATION 7-10* (2001); GOLDSTEIN, *EXPERIENCE OF INSIGHT*, *supra* note 110, at 7; U SILANANDA, *THE FOUR FOUNDATIONS OF MINDFULNESS* 159-66 (1990); *Mahasatipatthana Sutta*, in *THE LONG DISCOURSES OF THE BUDDHA* 335, 348-50 (A Translation of the Digha Nikaya by Maurice Walshe, 1995) [hereinafter Walshe]. "Suffering" is the most common English translation of the ancient Pali word "dukkha" but it is not adequate. See Walshe, *supra*, at 20. Matthew Flickstein uses "unsatisfactoriness." FLICKSTEIN, *supra*, at 117, *passim*. Stephen Batchelor uses "anguish." STEVEN BATCHELOR, *BUDDHISM WITHOUT BELIEFS* (*passim*) (1997).

119. See generally GUNARATANA, *supra* note 108.

120. "Buddhist psychology considers the mind to be the sixth sense organ, which experiences mental objects such as thoughts and emotions, and acts of volition." FLICKSTEIN, *supra* note 118, at 26.

121. See DOUGLAS STONE ET AL., *DIFFICULT CONVERSATIONS* 86-90 (1999).

and associated bodily sensations more fully, so they have less power over us; and if they have less power over us, we can experience them more fully. One example is our aversion to experiencing suffering, our own and that of others, which may be based on a fear that we will be overwhelmed by the experience. When Morrie Schwartz was near death from Lou Gehrig's disease, he explained that he was "detaching" himself from certain emotions by experiencing them more fully:

"[D]etachment doesn't mean you don't let the experience *penetrate* you. On the contrary, you let it penetrate you *fully*. That's how you are able to leave it. . .

"Take any emotion—love for a woman, or grief for a loved one, or what I'm going through, fear and pain from a deadly illness. If you hold back on the emotions—if you don't allow yourself to go all the way through them—you can never get to be detached, you're too busy being afraid. You're afraid of the pain, you're afraid of the grief. You're afraid of the vulnerability that loving entails.

"But by throwing yourself into these emotions, by allowing yourself to dive in, all the way in, over your head even, you experience them fully and completely. You know what pain is. You know what love is. You know what grief is. And only then can you say, 'Alright. I have experienced that emotion. I recognize that emotion. Now I need to detach from that emotion for a moment.'"<sup>122</sup>

Another mindfulness technique for "disarming" strong impulses, feelings or thoughts is to break them into their component parts. For instance, mindful attention can help us distinguish pain, or other "unpleasant" sensations from the suffering connected with them. Next time you notice an itch, do not scratch it. Instead, observe it carefully. You will notice that it is composed of at least two parts: a physical sensation (which itself changes) and a welter of thoughts, emotions, and feelings that constitute craving or aversion (e.g., wanting the feeling to go away, wanting to scratch it). Likewise, you can distinguish that *pain* in your back from the *suffering* that comes from wishing it were gone or from worrying about its implications for your job or family life. And such perceptions can lead to the insight that although pain and other unpleasant sensations—physical and mental—are necessary in this life, suffering, in a sense, is optional.<sup>123</sup>

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122. MITCH ALBOM, TUESDAYS WITH MORRIE 103-04 (1997).

123. Here I am drawing on talks I have heard by several teachers of mindfulness meditation, including Shinzen Young and Matthew Flickstein.

In other words, through mindful observation of the manifestations of craving and aversion, you can notice their impermanence and gain some distance from them; if you can do that, the “suffering” stops, even though the pain or fear or negative mind states continue. Such non-attached, non-judgmental observation can lead to patience, discernment, and judgment both in everyday life and in law practice and law school. In addition, the recognition of impermanence<sup>124</sup> pierces the illusion, which afflicts most of us, that we can achieve lasting contentment through satisfying our cravings and aversions. Oscar Wilde recognized this when he said, “In life there are two tragedies. One is not getting what you want. The other is getting it.”<sup>125</sup>

This non-attached, non-judgmental perspective can also help us respond more appropriately to situations—and the thoughts, feelings, and bodily sensations that the situations elicit in us—rather than reacting in habitual ways. Early in my meditation practice, for instance, mindfulness helped me deal with claustrophobic reactions that have plagued me since childhood. By observing—with all the equanimity I could muster—the impulses, thoughts, fears, and bodily sensations that bombard me when I feel shut in, I saw their impermanence and learned to sit comfortably between two other people on

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Epictetus expressed a similar insight: “Happiness and freedom begin with a clear understanding of one principle: Some things are within our control, and some things are not. . . . Trying to control or to change what we can’t only results in torment.” EPICTETUS, A MANUAL FOR LIVING 9-10 (Sharon Lebell trans., 1994).

124. In the Buddhist way of thinking, impermanence characterizes all physical objects as well as our thoughts, feelings, and bodily sensations. It even describes our selves. Much suffering comes from trying to resist the reality of impermanence and constant change.

The Buddha taught that even our selves do not have a continuous existence, but arise and fall, moment to moment, just like any other phenomenon. This idea is extraordinarily difficult, and perhaps impossible, to explain, or grasp in words. For one explanation, see GOLDSTEIN, *INSIGHT MEDITATION*, *supra* note 107, at 116-17. For many, the goal of meditation practice is to achieve a non-intellectual grasp of “selflessness,” which is a crucial element of enlightenment in Buddhist thought. To benefit from mindfulness practice, however, it is not necessary to understand, or even seek to understand, this concept. Still, it is obvious that much craving and aversion, including greed, hatred and anger, come from strong attachments to the sense of self and the attendant belief that we are truly separate from others. See SALZBERG, *supra* note 116, at 1. Such a belief can propel us toward attitudes and practices that enhance our selves, usually at the expense of others. It fuels craving that rests on the certainty that there is not enough of anything—money, fame, power, even love—to go around. *Id.*

125. ARRON, *RUNNING*, *supra* note 25, at xi. The reality is that we cannot avoid all unpleasantness in this life. Moreover, even the acquisition of the objects of our cravings does not provide *lasting* satisfaction.

long airplane flights and in theaters.<sup>126</sup> Mindfulness also can help us see desires more clearly. Between the impulse to grab a piece of banana cream pie and the act of reaching for it, mindfulness allows us to insert a “wedge of awareness”<sup>127</sup> that can give us the time and resources to make a wise decision—in light of our understanding that the intense craving will disappear, even if we do not eat the pie.<sup>128</sup> Obviously, such a process can help a lawyer make more discerning decisions about how to respond to behavior from an opposing lawyer or judge that seems hostile or behavior by a client that seems too emotional or that seems to threaten the lawyer’s self-esteem.<sup>129</sup>

The potential benefits of mindfulness meditation mentioned above—increases in understanding of self and others, in compassion, in the ability to achieve a distance from habitual mind-sets and from craving and aversion, and thus to reduce suffering—are widely accepted by teachers and practitioners. So are a few other related outcomes, such as increased happiness and enhanced abilities to concentrate, to think clearly, and to chart our own course in life. Research studies have documented a range of benefits: improved concentration and a sense of calm, along with a decline in anxiety, hostility, and depression.<sup>130</sup> Studies also have shown increases in

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126. I do not mean to imply that I have come close to mastering the ability to be mindful. *While I was writing this article about mindfulness*, I paused to make coffee. I put the ground coffee and water into the coffee maker and turned it on—but I forgot to put the carafe in its proper place, and so the coffee ran all over the kitchen counter. I noted the irony and chided myself, then proceeded to do the same thing, *again!*

127. FLICKSTEIN, *supra* note 118, at 28.

128. Readers who enjoy banana cream pie or other sensual pleasures may rest assured that mindfulness does not require that you give them up; it does help you make decisions about them in light of their consequences.

129. *See infra* Part IV.B.2.

130. Most of the systematic outcomes studies on mindfulness meditation have focused on one system of instruction: the Mindfulness-Based Stress Reduction (MBSR) method, developed by Jon Kabat-Zinn and his colleagues at the Stress Reduction Clinic at the University of Massachusetts Medical Center in Worcester and described in KABAT-ZINN, FULL CATASTROPHE, *supra* note 10. *See* Jon Kabat-Zinn, *Mindfulness Meditation: Health Benefits of an Ancient Buddhist Practice*, in MIND/BODY MEDICINE 259, 268 (Daniel Goleman & R.A. Gurin eds., 1993).

Researchers have studied the impact of a University of Arizona course (that was based primarily on mindfulness) on medical and premedical students. Shauna L. Shapiro et al., *Effects of Mindfulness-Based Stress Reduction on Medical and Premedical Students*, 21 J. BEHAV. MED. 581 (1998). Student self-reports during the exam period following the end of the course showed reductions in levels of psychological distress, including depression and anxiety, along with increases in empathy and spirituality. *Id.* at 581. Another study found that a MBSR program had similar effects on undergraduate students in a behavioral medicine class. *See* John A. Astin,

the ability to regulate chronic pain.<sup>131</sup>

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*Stress Reduction through Mindfulness Meditation: Effects on Psychological Symptomatology, Sense of Control, and Spiritual Experiences*, 66 *PSYCHOTHERAPY & PSYCHOSOMATICS* 97 (1997). See also John J. Miller et al., *Three-Year Follow-up and Clinical Implications of a Mindfulness Meditation-Based Stress Reduction Intervention in the Treatment of Anxiety Disorders*, 17 *GEN. HOSP. PSYCHIATRY* 192 (1995); M.P. Sharma et al., *Therapeutic Effects of Vipassana Meditation in Tension Headache*, 6 *J. PERSONALITY & CLINICAL STUD.* 201 (1990).

Mindfulness-Based Stress Reduction combined with cognitive-behavioral therapy also has produced benefits. See SEGAL ET AL., *supra* note 10; Teasdale et al., *supra* note 10.

Scientists may be on the verge of showing a causal connection between mindfulness meditation and happiness. In light of evidence that happiness is positively correlated with high levels of activity in the brain's left prefrontal lobe (whereas depression is marked by more activity in the right prefrontal lobe), Richard J. Davidson of the University of Wisconsin and a number of his colleagues are studying whether mindfulness meditation can also affect the level of activity in the prefrontal lobes. The results are not yet available. See Pam Belluck, *Looking for Happiness? It May Be Very Near*, N.Y. TIMES, July 24, 1999, at A17.

131. See Betsy B. Singh et al., *A Pilot Study of Cognitive Behavioral Therapy in Fibromyalgia*, 4 *ALTERNATIVE THERAPIES IN HEALTH AND MEDICINE* 67 (1998) (finding that an eight-week program in mindfulness meditation, along with education about stress and perception and movement therapy based on Qi Gong, produced significant reductions in symptoms of fibromyalgia, a syndrome characterized by pervasive pain in muscles and joints).

Many of the studies of the effects of mindfulness meditation have methodological limitations, which their authors acknowledge, that would render them less than persuasive to some readers. On the other hand, many in the field believe that the studies cannot measure some of the deep changes that meditation brings about in the way people see the world and conduct themselves in it. See MURPHY & DONOVAN, *supra* note 108, at 27. And anyone who has practiced knows that it tends to have a significant impact.

Two other caveats: 1. I am not asserting that mindfulness meditation always produces any particular outcome. The effect of mindfulness meditation practice on an individual is unpredictable, and not necessarily permanent. Much turns on the mediator's background, life experience and circumstances, the extent and manner of her practice and teachers and teachings to which she is exposed.

The effect also can depend on the intention one brings to the practice. As with any other activity—tennis, or ballroom dancing, or PTA—people can enter meditation practice because of a wide range of motives. As the old story has it: "Harry goes to the synagogue to talk to God; and Sam goes to the synagogue to talk to Harry." In fact, many people in the West come to meditation because of some kind of difficulties in life. In certain settings, such as Mindfulness-Based Stress Reduction Programs, many participants sign up because of physical health problems. Participants in many programs seek meditation because of emotional pain, ranging from mental illness to dissatisfaction with their professional or personal lives; still others may just want adventure, relaxation, or society.

But the mediator's ostensible motivation does not necessarily determine the effect of the practice. Harry may wind up talking to Sam, and Sam may talk to God. Similarly, some people can attend multiple meditation retreats and experience little change, while others, who are looking for little, could undergo enormous change early in their practice. Stories of the unpredictability of spiritual development abound.



The teachings on which mindfulness is based are as much a philosophy or a psychology as a religion.<sup>132</sup> Of course, the religion of Buddhism has arisen around these teachings. But mindfulness meditation resonates with spiritual practices from many religions<sup>133</sup> and has attracted countless people from a variety of backgrounds. Monotheistic religions include traditional practices that resemble aspects of mindfulness meditation.<sup>134</sup> And practitioners of a variety of religions have explicitly adopted mindfulness meditation methods that derive from the teachings of the Buddha.<sup>135</sup> In addition, as explained

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*See, e.g.,* JACK KORNFELD, *AFTER THE ECSTASY, THE LAUNDRY* 116-19, 124-27 (2000) [hereinafter, KORNFELD, *AFTER THE ECSTASY*.]

2. People who do develop great mindfulness skills and experience significant insights sometimes face challenges integrating them into their every day lives. *See generally* KORNFELD, *AFTER THE ECSTASY*, *supra*. Kornfield quotes Pir Vilayat Kahn, head of the Sufi Order in the West: "Of so many 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." *Id.* at xxi. Even very accomplished practitioners are unable to maintain mindfulness and equanimity all the time. *Id.* Masters like Thich Nhat Hanh and the Dalai Lama admit to occasional bouts of anger.

When the 1991 U.S. bombings evoked in him the horrors of Vietnam, at first Thich That Hanh felt so angry he canceled his American teaching schedule. . . . [I]t took him several days to breath and calm his heart and transform the anger into grief and the power of fierce compassion so he could come to America and speak passionately to the root of the problem. The Dalai Lama has written, "In situations of great injustice I can get angry for a time, but then I think, 'What is the use,' and gradually this anger turns into compassion."

*Id.* at 203.

"Being mindful is not a matter of always keeping your balance; more importantly, it also involves constantly regaining lost balance." STONE ET AL., *supra* note 121, at 122 (quoting O Sensei, founder of Aikido).

132. BATCHELOR, *supra* note 118, at 19 ("Depending on which part of Buddhism you grasp, you might identify it as a system of ethics, a philosophy, a contemplative psychotherapy, a religion.")

133. *See* KORNFELD, *AFTER THE ECSTASY*, *supra* note 131, *passim*.

134. *See, e.g.,* Joseph Goldstein, *The Science and Art of Meditation*, in VOICES OF INSIGHT 118, 121 (Sharon Salzberg ed., 2000) (quoting Saint Francis de Sales, a 17th Century Bishop, who said, about prayer: "If the heart wanders or is distracted, bring it back to the point quite gently. And even if you did nothing during the whole of the hour but bring your heart back, though it went away every time you brought it back, your hour would be very well employed."). Aspects of Christian centering prayer resemble the concentration aspects of mindfulness meditation. For example, Thomas Keating's guidelines for centering prayer focus on meditating on a sacred word, and therefore are primarily a concentration form of meditation; they include the following: "When you become aware of thoughts, return ever so gently to the sacred word." Thomas Keating, *Appendix: The Method of Centering Prayer*, in CENTERING PRAYER IN DAILY LIFE AND MINISTRY 129, 130-31 (Gustave Reininger ed., 1998).

135. *See e.g.,* ALAN LEW, ONE GOD CLAPPING: THE SPIRITUAL PATH OF A ZEN RABBI 62-68, 205, *passim* (1999); WILLIAM JOHNSON, CHRISTIAN ZEN 111, *passim* (1979). The organization Resources for Ecumenical Spirituality of Dunnegan, Missouri offers

above, the practice has found employment in many secular settings.<sup>136</sup>

#### IV. MINDFULNESS MEDITATION AND THE LEGAL PROFESSION

##### A. *Recent Developments*

Mindfulness meditation has entered the legal community, too. In 1989, the Center for Mindfulness in Medicine, Health Care and Society offered a Mindfulness-Based Stress Reduction (MBSR) program to trial court judges.<sup>137</sup> And in the mid-1990's mediators for the U.S. Court of Appeals for the Ninth Circuit attended a day-long session on mindfulness at Spirit Rock Meditation Center.<sup>138</sup> More recently, in fall of 1998 and 1999, the 400-lawyer Boston office of Hale and Dorr offered its lawyers mindfulness meditation training using the MBSR model.<sup>139</sup> Each program involved pre- and post-program interviews; homework assignments; eight weekly two-hour sessions; and a daylong "retreat" that included formal and informal meditation practices, lectures and in-class discussions.<sup>140</sup> Beginning in April

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[s]ilence and awareness retreats, based on the teachings of Saint John of the Cross and vipassana (insight) meditation practice [, which] come from the Christian Carmelite and Theravadan Buddhist traditions." *THE LAY CONTEMPLATIVE* 134-35 (Virginia Manss ed., 2000).

136. Mindfulness meditation is one of a number of contemplative or spiritual practices that are becoming popular in the West. A review of these is beyond the scope of this article. I do not mean to imply that mindfulness meditation is superior to other contemplative practices or to psychotherapy. In fact other contemplative practices may produce some of the same or similar outcomes to those produced by mindfulness practice. See MURPHY & DONOVAN, *supra* note 108. And so may psychotherapy; mindfulness is often used in conjunction with psychotherapy. See MARK EPSTEIN, *THOUGHTS*, *supra* note 10, at 163-222, for a discussion of the relationship between meditation and psychotherapy. For a discussion of the use of mindfulness in treating depression, see SEGAL ET AL., *supra* note 10. I am writing about mindfulness because I have practiced it since about 1990 and have benefited and seen others benefit from it—and because, as I show in the next Part, it may be becoming a presence in the legal community.

137. See KABAT-ZINN, *FULL CATASTROPHE*, *supra* note 10, at 125-26.

138. Telephone interview with Dana Curtis, Lecturer in Law, Stanford Law School, and former mediator for U.S. Court of Appeals for the Ninth Circuit (Dec. 18, 2001).

139. See 1998 HALE AND DORR EVALUATION, *supra* note 3; 1999 HALE AND DORR EVALUATION, *supra* note 3.

140. See 1998 HALE AND DORR EVALUATION, *supra* note 3; 1999 HALE AND DORR EVALUATION, *supra* note 3.

Forty-two attorneys enrolled in the 1998 course, and thirty-three completed it (attended five or more sessions or otherwise stayed in touch with the instructors). See 1998 HALE AND DORR EVALUATION, *supra* note 3, at 1. Thirty-nine Hale and Dorr attorneys attended the 1999 program, eleven of whom had taken the previous year's

2002, attorney Geoffrey Hargreaves-Heald offered a similar program to his colleagues in the Boston office of the 160-lawyer firm Nutter, McClennan and Fish, LLP.<sup>141</sup>

Since the fall of 1998, the Center for Contemplative Mind in Society (CCMS) has organized five, five-day contemplative practice retreats for law students from Yale and Columbia and for law professors and lawyers.<sup>142</sup> At these retreats, led by distinguished meditation and law teachers,<sup>143</sup> participants received instructions

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program; twenty-one completed the workshop. 1999 HALE AND DORR EVALUATION, *supra* note 3, at 1. Ferris Urbanowski, Senior Teacher at the University of Massachusetts Medical Center's Center for Mindfulness in Medicine, Health Care and Society did most of the teaching, and Jon Kabat-Zinn, then-Director of that program, joined her for a portion. For further descriptions of the 1998 program, see KEEVA, TRANSFORMING PRACTICES, *supra* note 47, at 82.

In April 2001, Hale and Dorr hosted a meeting, which I attended, to introduce mindfulness meditation to training directors from other large Boston law firms.

Although the firm is not currently sponsoring a meditation program, some Hale and Dorr lawyers continue to meditate together weekly. Interview with Ferris Urbanowski, Senior Teacher, Center for Mindfulness in Medicine, Health Care and Society, in New York, NY (Jan. 26, 2001) (who led the formal meditation training programs at Hale and Dorr). And some have attended all or portions of the roughly ten yoga and meditation sessions led by Brenda Fingold, formerly Hale and Dorr Partner Responsible for Training and Professional Development, who has left the firm and now teaches yoga and meditation in corporate and legal settings. Telephone interview with Brenda Fingold (Dec. 18, 2001); email message to Leonard L. Riskin from Brenda Fingold (Jan. 2, 2002).

141. Email message to lawyers in Nutter, McClennan and Fish, LLP, from Geoffrey Hargreaves-Heald, Of Counsel and member of the real estate department of Nutter, McClennan and Fish, LLP (Feb. 26, 2002); email messages to Leonard L. Riskin from Geoffrey Hargreaves-Heald, Of counsel and member of the real estate department of Nutter, McClennan and Fish, LLP (Mar. 15, 2002 and Mar. 17, 2002).

142. The first of these retreats included mainly Yale Law School students; the second included some of the same students along with lawyers and professors from other law schools; the third added students from Columbia Law School as well as lawyers and professors from several law schools; and the fourth and fifth retreats were for students, law professors, and attorneys from across the country. Memorandum to Leonard L. Riskin from Douglas A. Codiga, Consultant to and Former Law Project Director, Center for Contemplative Mind in Society. (Nov. 28, 2001). Although three of these retreats were designed for Yale Law students, they were not "official functions of Yale Law School." THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, A CONTEMPLATIVE APPROACH TO LAW, WITH A REPORT ON THE YALE LAW CONTEMPLATIVE PRACTICE RETREAT 35 (1999) [hereinafter CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, CONTEMPLATIVE APPROACH TO LAW].

143. Meditation teachers included Joseph Goldstein (no relation to the late professor Joseph Goldstein of Yale Law School) and Sharon Salzberg, co-founders of the Insight Meditation Society in Barre, Mass.; Grove Burnett, head of the Western Environmental Law Center, an environmental law firm, and founder of the Vallecitos Mountain Refuge in Taos, N.M.; and Lloyd Burton of the University of Colorado. Members of the steering committee of the law program of the Center for Contemplative Mind in Society who also provided leadership for these retreats included Yale Law School Professors Robert Burt and Harlon Dalton; Charles Halpern, then the

and practiced mindfulness meditation and yoga. They observed silence, except during designated periods, and minimized even non-verbal social interaction, in order to enhance their ability to develop an interior focus.<sup>144</sup> Each retreat also included lectures about teachings of the Buddha, plus presentations, dialogues, or discussions on a series of themes that sought to link perspectives drawn from these teachings and meditation with the participants' work in law—as students, teachers, or practitioners.<sup>145</sup> The CCMS also sponsored a

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President of the Nathan Cummings Foundation; Mirabai Bush, Executive Director of the Center for Contemplative Mind in Society; Jack Himmelstein, a New York-based mediator and mediation trainer who taught for many years at both Columbia and CUNY law schools; Steven Schwartz, a long-time meditator and head of a Northampton, Massachusetts public-interest law firm that represents persons with disabilities; Paul Ginter, Program Officer of the Fetzer Institute; Sunanda Markus, a consultant to the Center for Contemplative Mind in Society with much experience in yoga and meditation, who gave yoga instructions; and Douglas Codiga, then-Director of the Law Program of the Center for Contemplative Mind in Society, a member of the University of Hawaii Law faculty and a long-time student of Asian thought and practices. Mitzi White, a member of the Harvard psychology department faculty, conducted an evaluation of the first Yale Contemplative Law retreat. See CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, *A CONTEMPLATIVE APPROACH TO LAW*, *supra* note 142, 6, 12 (1999), available from the Center for Contemplative Mind in Society at [Info@contemplativemind.org](mailto:Info@contemplativemind.org). Mitzi White, *The Yale Contemplative Practice Retreat: Report*, in, *A CONTEMPLATIVE APPROACH TO LAW*, *supra* note 142, 12 (1999); HEIDI NORTON, *REPORT ON THE OCTOBER 2001 CONTEMPLATIVE LAW RETREAT* (2002), available from the Center for Contemplative Mind in Society at [Info@contemplativemind.org](mailto:Info@contemplativemind.org).

144. These retreats included many standard features of insight meditation retreats in the U.S., such as lectures about meditation practice and philosophy (with questions and answers), and instruction and practice in sitting and walking meditation and yoga. The planners modified this basic structure by infusing attention to specific issues related to lawyering—such as separation and connection, winning and not winning, listening, law and truth, action and non-action—which they sought to illuminate through meditations, presentations, dialogue, and discussion, some of which drew heavily on Buddhist thought. In order to facilitate learning along this dimension, participants were allowed to talk with one another during designated periods.

To facilitate the participants' looking inward, they observed silence during large portions of each day. At the second Yale retreat, when the bell rang at 12:30, in the middle of lunch, it signaled that participants were free, but not required, to talk. For me, this practice brought about the most poignant moments in the retreat. I experienced very strong competing impulses. On the one hand, I wanted to talk to my table-mates, to learn how they were reacting to all this; and it seemed rude not to talk under such circumstances. On the other hand, I was luxuriating in the silence and the opportunity it gave me to look inside, and I didn't want to invade the privacy of my companions, who, I assumed, were having a similar experience. Others told me they went through same conflict and felt reluctant to break the silence.

145. See CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, *CONTEMPLATIVE APPROACH TO LAW* *supra* note 142.

“gathering (retreat/thinking meeting) . . . as part of a focus on developing a cohesive contemplative law community in the Boston area.”<sup>146</sup>

Other organizations recently have fostered mindfulness meditation instruction for lawyers. The American Bar Association demonstrated its support by sponsoring a book that pays much attention to mindfulness practices for lawyers, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*, by ABA Journal Senior Editor Steven Keeva,<sup>147</sup> as well as conferences and CLE programs based on that book.<sup>148</sup> The ABA Section of Dispute Resolution included a preconference workshop on “Mindfulness Meditation and the Personal Presence of the Mediator” at its 2002 Annual Conference in Seattle.<sup>149</sup> In February 2002, the Boston Bar Association sponsored a two-hour program called “Back to Balance” that focused on mindfulness and yoga to help lawyers reduce stress and bring balance into daily life.<sup>150</sup> The Shambhala Meditation Center of Silver Spring, Maryland offered a one-day program entitled “Awakened Lawyering: Practicing Law with Mindfulness and Awareness” in April 2000.<sup>151</sup>

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146. [Http://www.contemplativemind.org/programs/law/news/html](http://www.contemplativemind.org/programs/law/news/html) (visited Mar. 17, 2002).

147. KEEVA, *TRANSFORMING PRACTICES*, *supra* note 47. Structured around a series of brief profiles of lawyers, whose spiritual practices enhance the quality of their practices and lives, the book includes descriptions of a number of mindfulness meditation activities and practices.

148. The August 1999 ABA annual meeting in Atlanta included a “Presidential Showcase” program based on *Transforming Practices*; I led a segment on mindfulness in which the 45 participating lawyers engaged in a brief meditation. And in September 1999, the *ABA Journal* ran an excerpt from the book as a basis for a call-in CLE program that included a substantial segment on mindfulness. Steven Keeva, *Integrating the Heart and Mind*, A.B.A. J., Sept. 1999, at 57, 58.

In May 2000, Keeva established a website that addresses issues raised in the book: <http://www.TransformingPractices.com>.

149. Daniel Bowling (former CEO of the Association for Conflict Resolution and Director-Designate of the Private Adjudication Center at Duke Law School) and I coled this session.

150. Telephone interview with Brenda Fingold (Dec. 18, 2001); email message to Leonard L. Riskin from Brenda Fingold (Jan. 2, 2002). Yoga commonly appears as part of mindfulness meditation training programs. Yoga, itself, often is taught as a mindfulness practice, and has become popular in U.S. society as well as among lawyers. “[I]n the gym of the Supreme court, Justice Sandra Day O’Connor and 15 others faithfully take their [yoga] class each Tuesday morning.” Richard Corliss, *The Power of Yoga*, TIME, Apr. 23, 2001, at 53.

151. Awakened Lawyering: Practicing Law with Mindfulness and Awareness (advertisement), WASHINGTON LAW., Mar./Apr. 2000, at 63; Telephone Interview with Greg Lubkin, D.C. international tax attorney (and one of the teachers of this program) (Apr. 15, 2000).

A variety of programs for lawyers have taken place recently in northern California.<sup>152</sup> In May 2001, a series of programs on mindfulness meditation and other contemplative practices, called "Contemplative Practice for the Legal Community," was offered by City University of New York School of Law and the CUNY Graduate Center.<sup>153</sup> In Kansas City, a group of lawyers meditate together each week under the auspices of the Kansas City Holistic Lawyers.<sup>154</sup> And since 1999, I have taught or co-taught workshops on mindfulness and negotiation, mediation or lawyering at events sponsored by dispute resolution organizations in Wisconsin,<sup>155</sup> Michigan,<sup>156</sup> Iowa,<sup>157</sup> Austria,<sup>158</sup> and

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152. Mary Mocine, a former lawyer who has become a Zen priest, has provided short mindfulness workshops emphasizing stress reduction for bar associations and law firms, leads one day sittings for lawyers twice each year at the San Francisco Zen Center and leads sitting groups for lawyers in San Francisco and Alameda County. Email message to Leonard L. Riskin from Mary Mocine (Dec. 18, 2001). For an article based on a talk by Mocine at one of these workshops, see Mary Mocine, *The Art of Listening*, CAL. LAW., July 2000, at 23. In May 2001, attorney Dennis Warren and meditation teacher James Baraz led a one-day mindfulness program for lawyers sponsored by the Marin County Bar Association and Spirit Rock Meditation Center. Email message to Leonard L. Riskin from Dennis M. Warren (May 23, 2001).

Workshops for lawyers on forgiveness, which include observing the breath, have been presented by Dana Curtis of Stanford Law School and Fred Luskin of Stanford Medical School. E-mail from Frederic Luskin, Researcher, Stanford Center for Research in Disease Prevention, to Leonard L. Riskin (Aug. 12, 2000) (on file with author). For an explanation of the value of forgiveness and Curtis and Luskin's approach to it, see Frederic Luskin & Dana Curtis, *Forgiveness*, CAL. LAW., Dec. 2000, at 23. Luskin and Steven Neustadter also have offered forgiveness workshops for lawyers. Telephone interview with Steven Neustadter (Dec. 18, 2001). For an extensive treatment of forgiveness, see FRED LUSKIN, *FORGIVE FOR GOOD* (2001).

153. E-mail from Fred Rooney, Director, City University of New York School of Law Community Legal Resource Network, to Leonard L. Riskin (Feb. 20, 2001) (on file with author). Through this effort, CUNY offered four programs to the CUNY community and the wider legal community, each of which had four weekly sessions. The programs dealt with mindfulness meditation, loving-kindness meditation, contemplative practice and yoga. *Id.*

154. Email message to Leonard L. Riskin from Kathy Bailes, Kansas City lawyer (June 21, 2001).

155. Workshop on *Mindfulness in Mediation and Lawyering*, Wisconsin Association of Mediators Annual Conference in Madison, Wis. (Nov. 9, 2000); preconference session on Mindfulness in Mediation at WAM Conference in Madison, Wis. (Oct. 31, 2001).

156. At the Annual Michigan Dispute Resolution Conference, in November 2000, Professor Scott Peppet of the University of Colorado Law School and I conducted a daylong workshop on "Building Negotiation Awareness," which included mindfulness meditation, to help professionals carry out some of the ideas suggested in the book on which the program was based. See MNOOKIN ET AL., *supra* note 54. In addition, I conducted a two-hour workshop called "Mindfulness in Mediation (and Negotiation and Lawyering)." In May, 2001, Scott Peppet introduced mindfulness meditation with great success, into a session at the Utah Conference on Dispute Resolution, in order to help participants better understand the role of identity in conflict. Email

Denmark;<sup>159</sup> in a course in the graduate certificate program in Dispute Resolution at Southern Methodist University;<sup>160</sup> and in CLE programs in Missouri,<sup>161</sup> California,<sup>162</sup> and Alabama.<sup>163</sup>

Mindfulness meditation also has appeared on law school campuses. Although the retreats for Yale and Columbia law students described above took place off campus and did not offer academic credit, some students who took part gathered for weekly sittings after the retreats.<sup>164</sup> Two Mindfulness-Based Stress Reduction Programs were offered for students and faculty at the University of Missouri-Columbia<sup>165</sup> and the University of North Carolina law schools,<sup>166</sup> and I presented brief programs on mindfulness at Harvard Law School

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message to Leonard L. Riskin from Scott Peppet, Associate Professor, University of Colorado School of Law (May 12, 2001). See *infra*, text accompanying note 269.

157. I conducted a daylong program called "Self-Awareness for Mediators and Lawyers: A Workshop on Mindfulness Meditation" for the Iowa Peace Institute in Grinnell, Iowa (May 11, 2001). In May 2002, Ferris Urbanowski and I will co-lead a three day "Advanced Mediation Training Based on Mindfulness" in Des Moines, also sponsored by the Iowa Peace Institute.

158. In May 2000 and January 2002, I introduced mindfulness instruction as a voluntary supplement to mediation trainings I co-led in Salzburg, Austria, sponsored by AVM, an Austrian association that promotes mediation.

159. In January 2002, I led a session on Mindfulness in Mediation at the Nordic Mediation Conference in Copenhagen, Denmark.

160. I co-taught this course—called *Mediation Mindsets, Mindfulness and Meditation*—with Ferris Buck Urbanowski, Senior Teacher at the University of Massachusetts Medical School's Center for Mindfulness in Medicine, Health Care and Society, on April 19-20, 2001.

161. This two-and-a-half-hour mindfulness program made up the afternoon component of a daylong program on "Leading a Balanced Life in Law" that took place on March 9, 2001 under the sponsorship of the University of Missouri-Columbia School of Law, the Missouri Bar Committee for Lawyer Assistance, and the Kansas City Holistic Lawyers. Dallas lawyer John McShane led the morning session and participated in the afternoon session. In Fall 2001, I led a day-long program on mindfulness for mediators and lawyers in Columbia, Missouri.

162. I gave an introduction to mindfulness to a group of lawyers assembled for CLE programs on dispute resolution sponsored by the Straus Institute for Dispute Resolution at Pepperdine University School of Law (July 27, 2001).

163. I presented two, two-hour programs on Mindfulness in Mediation at the Alabama Conference on Dispute Resolution, sponsored by Jones School of Law in Montgomery (Feb. 15, 2002).

164. E-mail from Robert Burt, Professor, Yale Law School, to Leonard L. Riskin (Feb. 6, 2001) (on file with author). DOUGLAS CODIGA, INTERVIEWS WITH YALE AND COLUMBIA STUDENTS (Center for Contemplative Mind in Society) (Oct. 2001) at 13 [Hereinafter CODIGA, INTERVIEWS]. In February 2001 some Yale retreat participants gathered for a four-hour "mini-reunion" that included meditation and yoga. E-mail from Shad Fagerland '01, Yale Law School, to Leonard L. Riskin (Mar. 6, 2001) (on file with author).

165. I co-taught this course in spring 2001 with two psychologists—Lynn Rossy and Beth Shoyer—and in fall 2001 with Beth Shoyer and Elizabeth Callahan, an attorney and yoga teacher.

(nearly a year before the forum at which this article was presented)<sup>167</sup> and at Cardozo, Marquette, and Touro Law Schools.<sup>168</sup> At Harvard Law School, the Office of Student Life Counseling arranged for Brenda Fingold, formerly of Hale and Dorr, to lead a six-week workshop on stress reduction, meditation and yoga, beginning in March 2002.<sup>169</sup> At Stanford Law School, Steven Neustadter offered mindfulness meditation workshops emphasizing stress reduction that met for ten weekly sessions in 2001 and 2002.<sup>170</sup> These programs, along with yoga and meditation programs for students at CUNY Law School, and the contemplative practice retreats for Yale and Columbia law students, did not provide academic credit.

But students at seven U.S. law schools have earned credit for participation in courses that include mindfulness meditation. Professor Cheryl Conner, as Director of the Clinical Internship Program at Suffolk Law School, apparently pioneered the use of meditation in U.S. law schools. In 1997, she developed an elective called "The Reflective Practitioner" for students enrolled in clinical placements that also served as a "paper course" for other students.<sup>171</sup> Conner taught the students some fundamentals of Tibetan Buddhism and asked them to engage in a number of related experiential exercises, including Tibetan analytical meditation, in which one alternates between resting the mind and reflecting on a specific principle from a wisdom tradition. She also used a "calm abiding"<sup>172</sup> exercise, which is similar to mindfulness meditation, and an "exercise on compassion."<sup>173</sup>

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166. The University of North Carolina held its first such five-week program in spring 2001. E-mail with attachment from Eric Muller, Associate Professor, University of North Carolina School of Law, to Leonard L. Riskin (Jan. 23, 2001) (on file with author). The staff includes Muller, Jeff Brantley, M.D. of Duke University's Center for Integrative Medicine, and members of the UNC Law School staff and student body. *Id.* A similar program was planned for spring 2002. Email message to Leonard L. Riskin from Professor Eric Muller, University of North Carolina School of Law (Sept. 4, 2001).

Other law schools have offered stress management programs based on other methods. *See, e.g.*, Porter, *supra* note 26, at 15-16 (describing stress management program at Dickinson Law School based on training developed at Harvard Medical School's Mind-Body Medical Institute).

167. The Program on Negotiation at Harvard Law School sponsored this two-hour seminar on April 11, 2001, which was open to the Harvard Law Community and the public.

168. The Marquette and Touro programs were for faculty.

169. Email message to Leonard L. Riskin from Brenda Fingold (Jan. 24, 2002).

170. Telephone interview with Steven Neustadter (Dec. 18, 2001).

171. SUSAN DAICOFF, SUSAN'S HARMONIZING LEGAL EDUCATORS LIST (April 7, 2000) (on file with Professor Susan Daicoff, Florida Coastal School of Law).

172. KEEVA, TRANSFORMING PRACTICES, *supra* note 47, at 189.

173. KEEVA, TRANSFORMING PRACTICES, *supra* note 47, at 187.



Professor Jacqueline St. Joan, Director of Clinical Programs at the University of Denver College of Law, also offered a class in spring 2000 that involved students in field placements. She hoped to “introduce students to the fundamentals of contemplative practice as threads to weave together personal and professional lives.”<sup>174</sup> The class covered a range of contemplative practices and included a focus on the value of mindfulness in adhering to “The Lawyer’s Oath,” as well as “skillful means of dealing with clients, opposing counsel, supervisors, others and ourselves as we encounter problems in the practice of law.”<sup>175</sup> Steven Neustadter has introduced mindfulness meditation in limited ways into courses he teaches on Negotiation at Stanford and on Mediation at Hastings.<sup>176</sup>

Since 1999 I have made mindfulness meditation a substantial component of “Understanding Conflict,” a required course in the Master of Laws (LL.M.) program in Dispute Resolution at the University of Missouri-Columbia School of Law. Goals for the course include examining—more deeply than in other dispute resolution courses—the nature of conflict, how perceptions of conflict arise in the mind, and how lawyers and dispute resolution professionals might better handle conflict.<sup>177</sup> And at the University of Miami Law School, Professor Clark Freshman, along with psychology professor Adele Hayes, are working on integrating mindfulness training into a project to train students and lawyers in how mood affects negotiation and how to better manage the effects of mood on negotiation.<sup>178</sup>

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174. Jacqueline St. Joan, *Internship Class: Learning from Practice: Contemplative Practice and the Practice of Law* (Syllabus for University of Denver College of Law course), in CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, CONTEMPLATIVE FELLOWSHIP PROGRAM 166 (Materials prepared for the 1999-2000 Fellows Meeting, June 9-11, 2000).

175. *Id.*

176. Telephone interview with Steven Neustadter (Dec. 18, 2002).

177. I taught mindfulness meditation for several reasons: 1) to help the students observe how perceptions of conflict actually arise in themselves (i.e., to help them better understand themselves and others); 2) to help students develop skills and capacities for recognizing and managing their own internal conflicts—such as emotional self-awareness and awareness of others, and patience—which I thought would help them reduce stress, and perform better; and 3) to enable students to achieve more satisfaction in their professional roles. For similar reasons, I introduced mindfulness on a more limited scale into a Mediation course I taught at Pepperdine University School of Law in the summer of 2001.

178. E-mail from Clark Freshman, Professor, University of Miami School of Law, to Leonard L. Riskin (Feb. 4, 2001) (on file with author).

Professor Marjorie Corman Aaron used a brief mindfulness meditation exercise during the last session of her Mediation course in Spring 2001 at the University of Cincinnati. Email message to Leonard L. Riskin from Professor Marjorie Corman

Although comprehensive information about the outcomes of all of these efforts is not available, it seems plain that at least some participants thought they benefited richly. Lawyers in both programs at Hale and Dorr, for instance, set a range of goals—such as being calm under pressure, focusing better and learning more about themselves—and they reported high rates of achieving these goals.<sup>179</sup> Many appreciated the opportunity to enjoy a sense of community with their colleagues.<sup>180</sup> Brenda Fingold, a Hale and Dorr partner responsible for professional development and training while the mindfulness programs took place, says the reactions to the first eight-week workshop at Hale and Dorr were “uniformly positive.”<sup>181</sup> The training helped her, too. When she is “meditating regularly,” she says, “I’m more productive and creative in my work . . . [and] . . . deal much more effectively with daily challenges.”<sup>182</sup> And senior partner Jennifer Snyder believes that the training enhanced her ability to focus; she feels “better able to notice each moment and take advantage of what it offers for my work and life.”<sup>183</sup>

Some Yale law students developed the kind of non-attachment that is an essential part of mindfulness practice. As one, reflecting on the retreat, put it:

I had a fundamentally different experience of my being. It was enriching because I got to know something that was with me for a long time but that I never really had time to stop and look at. For example, I realized that my thoughts or the stream of my consciousness are not an intrinsic part of my being. Therefore, I can detach from that stream of consciousness and have more

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Aaron, University of Cincinnati College of Law (May 8, 2001). *See, infra*, text accompanying note 268.

179. *See* 1998 HALE AND DORR EVALUATION, *supra* note 3; 1999 HALE AND DORR EVALUATION, *supra* note 3. The 1999 Evaluation listed these “self-set” goals:

- be able to think through things and respond more effectively
  - be able to manage stress better and not be so affected by it
  - be more tolerant of things I disagree with . . . be less judgmental
  - be able to pay attention to other people—to just listen
  - get to know people better
  - meet people in firm with similar mindset
  - feel more comfortable while in this building
  - recommit myself to healthier attitude about work
  - develop harmony between work-self and other-time-self
- 1999 HALE AND DORR EVALUATION, *supra* note 3, at 2.

180. 1999 HALE AND DORR EVALUATION, *supra* note 3, at 5.

181. KEEVA, *TRANSFORMING PRACTICES*, *supra* note 47, at 82.

182. *Id.*

183. *Id.* Other lawyers who have practiced meditation report similar benefits, *see, e.g.*, KEEVA, *Passionate Practitioner*, *supra* note 76; text accompanying note 234, *infra*, as have judges. *See* KABAT-ZINN, *FULL CATASTROPHE*, *supra* note 10, at 125-26.

control over it, or more knowledge of it, or I can just observe how things develop. I was able to taste that. . . .<sup>184</sup>

Another student described her experience this way:

One of the main things that I learned was how to work on stepping back a little bit, not how to perfect it. I have more awareness. I feel now that I'm better able to acknowledge feelings of irritation and anger and let them go. If I get annoyed with another person and they are not doing anything—I'm just annoyed for no reason, I realize that it's a feeling that I'm having. It's not because the other person is a bad person or that they are doing something wrong. It's just that I'm having this irritation. By looking at the feeling, I don't have it anymore.<sup>185</sup>

Some students reported feeling closer to their fellow participants than other classmates and a greater willingness to be open with them; some felt a growth of compassion<sup>186</sup> and an improvement in their listening skills and abilities to understand others. And some thought the retreat "made them more willing to share with others and [to place] more value on friendship than competition."<sup>187</sup> One

184. White, *supra* note 143, at 23. As another student put it:

We go through so much of our lives doing things that we don't think about, just reflexes, really. I catch myself doing that all the time. It's disturbing how much of your life you live without really thinking. Contemplative practice makes an effort to break the stimulus-response patterns that have been ingrained in us since we were born. It involves learning to step back and notice your reactions.

*Id.* at 13.

185. *Id.* at 13-14.

186. White, *supra* note 143, at 15.

I feel that I was in a hard space before I went, which made me less charitable in my dealings with the world. The retreat made me more conscious of what was going on inside my brain that was leading me to have small thoughts rather than bigger more generous ones. I was conscious after the retreat of being reconnected with that part of myself that feels optimistic and more expansive and goes to the world with a bigger heart.

*Id.* at 25.

187. As one student put it:

After we got back, I was writing a brief for class. There was lots of research to be done, and I felt a bit behind. I was worried about it. I pulled an all-nighter and got all this research done. One of my friends asked by the next day, "How is your research going?" I had actually found a lot of cases. Before, I would have been very contractual and thought, "I don't want him to get all my cases." I would have said, "Well, if you show me some of your cases, then I'll show you some of mine." But then I stepped back and thought, "Well, you know really, what does it matter? Give him the stuff and maybe it will make his brief better than yours, but it's not that big a deal and you will probably ultimately build a better friendship of this, which is what this is really about.

*Id.* at 16.

student, writing in the *Washington Post*, found hope for the development of a special kind of working relationship among lawyers:

One evening, a group of us finds a 500-piece jigsaw puzzle of Van Gogh's "Irises." We talk and get in each other's way and fit together only the easiest corner. The next day we come back and work on the puzzle in silence. With fewer movements and in less time, we reconstruct difficult violet petals and green leaves. Afterward we remark on how aware we were of each other's hands and movements and how we could see the shape of one piece mirrored in its mate across the table. This is how lawyers ideally might work together—by harmonizing rather than jockeying for position, by building from each other's strengths. It's a moment far removed from the frantic, prickly image of litigation work, and it makes me wonder how we could reintroduce speech without losing what we've gained from the quiet.<sup>188</sup>

One Yale Law School graduate who attended three retreats as a student wrote, "Since we bill ourselves as master strategists and problem-solvers, lawyers should realize that a contemplative approach is the key to solving our own chief problem: the meaning, purpose and manner of our lives."<sup>189</sup>

I asked students in my 1999 LL.M. course on "Understanding Conflict" to describe their experiences in meditation and to consider how meditation might affect them as professionals (and in their private lives).<sup>190</sup> All students who responded said they experienced significant stress reduction through meditation. As one put it, "One of the benefits of the exercises we are doing is that I have noticed myself becoming much more aware of the times I am really stressed, and now I actually take a few minutes to slow my breathing and calm my

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188. Emily Bazelon, *Insights Into 'The Practice,'* WASH. POST, Jan. 4, 1999, at C4.

Professor White found that after the first Yale retreat, some students thought the retreat helped them understand that as lawyers they would need to relate to their clients' situation and needs, not just their legal claims; others thought it showed them a bit about an alternative approach to law practice. They emphasized the clarity and sense of grounding that can come from the practice, as well as the enhanced ability to remain calm in difficult situations.

Some found clarity about job decisions, determining during the course of the retreat to find work that they would enjoy. Others learned to accept themselves as they were, and worry less about others' opinions of them.

Professor White concluded that after the retreat the students were "refreshed and centered," wanted to continue the community created in the retreat, and found it challenging to meditate in the face of law school obligations. After the retreat, students met twice for dinner and meditation sessions, and some of them gathered weekly to meditate. See White, *supra* note 143.

189. CODIGA, INTERVIEWS, *supra* note 164 at 6.

190. I am aware that the context and my relationship with these students may have influenced some of their comments.

thoughts. It usually works. . . ." Most saw other benefits as well. In the words of one:

The practice we're learning gets us past a lot of the petty hassles that distract us so often. We learn to clear the mind. We gain a certain distance and detachment. We learn to focus better on doing our jobs. We feel better and become more efficient. I think the most important thing this practice gives us is deliberation. I find I am less likely to jump to conclusions, the way your law professors try to get you to do. It's harder to push my buttons than it was before I started this practice. I'm cooler-headed, and more likely to see any issue from more angles, which . . . is the key to solving legal problems.

Most students thought the practice had enhanced their understanding of themselves and others. Several said it made them more compassionate and generous toward themselves and others. One found it made headaches go away and provided an energy boost. Another said, "I am now more aware when I begin to make an automatic response in a situation and recently I have been able to spot myself before doing so. I am also working hard at not letting my perceived successes or failures of the past influence how I live the present moment." One thought it enhanced creativity. Another said it helped him in athletic training to separate the pain from the suffering. After the course ended, one student told her classmates and me that meditation had enabled her to decide to marry a man who had been her best friend for many years.

One student wrote about a broader impact of mindfulness training on the entire group of LL.M. students:

What I find interesting about the LL.M. program is how we, as students, have changed. We are learning new information and skills and toning up our thinking but beyond that, I think we are growing personally. In discussions among ourselves, we note that we are listening to each other more carefully and we are able to use mindfulness when we feel possessed by the rigors of the program. Professor McAdoo observed that as well. I was meeting with her last week and discussing all the things that needed to be done. I felt overwhelmed for a moment, but then I paused and took a deep breath and reflected rather than spiraling into a nervous frenzy. She commented how she had seen that same thing happen with other students. We came to the program for increased knowledge but we have become better people in the process.

Another student described events that exceeded my greatest expectations. He said that meditation transformed his attitude toward

certain judges before whom he regularly argued criminal appeals. Instead of seeing them as adversaries, he simply engaged them in conversation. This lawyer also taught meditation to a colleague, who experienced a similar transformation, and to an incarcerated client.

All these programs for lawyers and law students took place in the last few years. They are self-consciously exploratory and experimental. They seem to share an assumption that lawyers and their clients would be better off in a variety of ways if more lawyers had a fuller awareness of, and greater skill in dealing with, their own inner lives (i.e., to allow aspects of their inner lives to inform, but not to dominate their practices).

I do not know whether these efforts are harbingers of a larger movement or a few flashes in a few pans. It seems clear, however, that the next several years will see significant growth in similar efforts. The Center for Contemplative Mind in Society plans to organize more retreats, to develop cooperative arrangements with law firms in selected metropolitan areas—pairing up law schools and law firms for contemplative practice events and activities—and to convene a working group that will explore the intellectual foundations and possible relevance of contemplative practices to the academy and to law practice communities.<sup>191</sup> Based on my informal contacts, I expect growth in mindfulness meditation activities sponsored by a variety of professional organizations, other CLE providers, and law schools. And I plan to shortly launch a Project on Mindfulness in Law and Dispute Resolution at the University of Missouri-Columbia School of Law.<sup>192</sup>

#### B. *Potential Benefits: How Mindfulness Meditation Might Help the Legal Profession*

Although mindfulness practice ordinarily relieves stress and often produces the other outcomes described above, it is impossible to say whether it will bring about any particular change in any individual lawyer or law student. Even if an individual develops some of the insights, capacities, and skills that commonly result from mindfulness practice,<sup>193</sup> the way in which such developments might unfold in

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191. E-mail from Douglas A. Codiga, Director, Law Program, Center for Contemplative Mind in Society, to Leonard L. Riskin (Aug. 21, 2000) (on file with author).

192. For developments, see <http://www.law.missouri.edu/csdr/>.

193. See *supra* Part III.

that person's life or law practice is also quite unpredictable.<sup>194</sup> Accordingly, the following discussion must be both speculative and narrowly focused.

Mindfulness practice could (1) help lawyers and law students feel better and perform better at virtually any task; and (2) enable some lawyers to listen and negotiate better, thereby providing service that is more responsive to their clients' needs and their own—and implementing some of the deepest aspirations associated with the legal profession and the “Comprehensive Law” Movement.<sup>195</sup>

### 1. *Feeling Better and Performing Better, In General*

On a practical, day-to-day level, mindfulness meditation could help lawyers and law students—those who are very unhappy and those who are already feeling well—*feel better* by enhancing their capacities to relax and to deal with stress and anxiety.<sup>196</sup> Such outcomes, combined with improvements in the ability to concentrate, should help them *perform better*, too, on virtually any task, especially those involving high levels of mental functioning. As psychologists Walter Mischel and Aaron DeSmet put it:

Managing and reducing stress improves not only self-cooling and self-control but also one's ability to generate and assess possible solutions to the conflict. Because a high level of stress can shift the balance from cool-system dominance to hot, managing stress effectively can mean the difference between suppressing hot impulses and lashing out uncontrollably. But stress also tends to decrease one's ability to solve complex problems. So people who argue when they are stressed and fatigued often find that they lack the self-control they might otherwise have. Their problem-solving ability is also impaired, so stress doubly undermines any attempts to resolve conflicts constructively.<sup>197</sup>

But mindfulness meditation can do more than reduce stress.<sup>198</sup> And there is evidence that the kinds of outcomes it fosters correlate with success in a variety of fields. Daniel Goleman—a psychologist, journalist, and authority on meditation—has articulated the concept

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194. Such changes and their impacts will depend on a complex set of interactions involving the person's background, situation, and commitment to practice, as well as the nature of the instruction and the approach of the teacher.

195. See *supra* notes 80-95.

196. See *supra* note 128 and accompanying text.

197. Walter Mischel & Aaron L. DeSmet, *Self-Regulation in the Service of Conflict Resolution*, in THE HANDBOOK OF CONFLICT RESOLUTION 256, 270 (Morton Deutsch & Peter T. Coleman eds., 2000).

198. See *supra* notes 114-31 and accompanying text.

of Emotional Intelligence, which he distinguishes from academic intelligence, the basis for the IQ and most other intelligence tests.<sup>199</sup> This idea of Emotional Intelligence, which draws upon and modifies work by other psychologists,<sup>200</sup> entails five “basic emotional and social competencies”: self-awareness,<sup>201</sup> self-regulation,<sup>202</sup> motivation,<sup>203</sup> empathy,<sup>204</sup> and social skills.<sup>205</sup> Goleman argues, marshaling a great deal of empirical evidence, that emotional intelligence is much more important than academic intelligence in predicting success at virtually any occupation or profession—assuming, of course, an adequate level of academic intelligence.<sup>206</sup>

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199. DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* (1995) [hereinafter GOLEMAN, *EMOTIONAL INTELLIGENCE*]; DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE* (1998) [hereinafter GOLEMAN, *WORKING WITH*].

200. Important precursors of Goleman’s work include HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (2d ed. 1993) (which elaborates the idea of “multiple intelligences”); Peter Salovey & John D. Mayer, “*Emotional Intelligence*,” 9 *IMAGINATION, COGNITION AND PERSONALITY* 185 (1989, 1990). See GOLEMAN, *WORKING WITH*, *supra* note 199, at 317. Howard Gardner has argued against Goleman’s concept of emotional intelligence. Howard Gardner, *Who Owns Intelligence?*, *ATLANTIC MONTHLY*, Feb. 1999, at 67, 75.

201. “Knowing what we are feeling in the moment, and using those preferences to guide our decision making; having a realistic assessment of our own abilities and a well-grounded sense of self-confidence.” GOLEMAN, *WORKING WITH*, *supra* note 199, at 318.

Emotional awareness is the most important of these of emotional intelligence capacities. In Goleman’s words: “That awareness—of how our emotions affect what we are doing—is the fundamental emotional competence. Lacking that ability, we are vulnerable . . . to being sidetracked by emotions run amok. *Such awareness is our guide in fine-tuning on-the-job performance or every kind*, managing our unruly feelings, keeping ourselves motivated, tuning in with accuracy to the feelings of those around us, and developing good work-related social skills, including those essential for leadership and teamwork.” *Id.* at 55 (emphasis added).

202. “Handling our emotions so that they facilitate rather than interfere with the task at hand; being conscientious and delaying gratification to pursue goals; recovering well from emotional distress[.]” *Id.*

203. “Using our deepest preferences to move and guide us toward our goals, to help us take initiative and strive to improve, and to persevere in the face of setbacks and frustrations[.]” *Id.*

204. “Sensing what people are feeling, being able to take their perspective, and cultivating rapport and attunement with a broad diversity of people[.]” See GOLEMAN, *WORKING WITH*, *supra* note 199, at 318.

205. “Handling emotions in relationships well and accurately reading social situations and networks; interacting smoothly; using these skills to persuade and lead, negotiate and settle disputes, for cooperation and teamwork[.]” *Id.*

206. See GOLEMAN, *WORKING WITH*, *supra* note 199, at 5, 6 *passim*. For a recommendation that law firms screen prospective associates for emotional intelligence or try to help lawyers develop it, see Lawrence R. Richard, *The Importance of Hiring ‘Emotionally Intelligent’ Associates*, *PA. LAW.*, Jan.-Feb. 2000, at 18.



As I have shown above, mindfulness meditation can help develop the first four of these emotional intelligence competencies—self-awareness, self-regulation, motivation, and empathy; these, in turn, are likely to help produce the fifth emotional intelligence competency: social skills.<sup>207</sup> Emotional Intelligence plainly can help lawyers avoid the kind of emotional “hijackings” described by law firm consultant Lawrence Richard:

When a mangled phrase in an associate’s first draft of a pleading leads a senior litigator to see red and publicly excoriate the associate, the litigator has suffered an amygdala hijacking. At the time he blasted the associate, chances are he didn’t have a conscious awareness of his anger before he got to the point where that anger triggered a powerful flood of hormones that led to the excoriating behavior. This is not to excuse the litigator, but rather to explain that his lack of awareness resulted in his having little choice in the moment. Emotionally intelligent people can detect an emotion and identify it early enough to allow the higher cerebral function to intervene and thus head off embarrassing and ineffective behavior.<sup>208</sup>

In addition, it can help lawyers fine-tune their performance in a variety of tasks, including those essential to the advocate’s role, that require them to persuade or motivate others.

## 2. *Dealing with Limiting Mind-sets and Relieving Suffering in Other Ways*

As indicated above, broader orientations toward lawyering—vectors in the Comprehensive Law Movement—respond to problems associated with the dominance of the Lawyer’s Standard Philosophical Map.<sup>209</sup> Although they have captured the imagination of many in the profession, these approaches remain very much on the periphery of law practice and legal education. Mindfulness can help lawyers expand their focus to include these broader perspectives and to carry out the aspirations associated with them. It can do this by helping them learn to observe their mind-sets, habitual reactions, and beliefs without being attached to them. Such awareness can allow them to

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207. These emotional intelligence *capacities* provide the foundation for, but do not guarantee, the development of certain practical skills, or emotional *competencies*. GOLEMAN, *WORKING WITH*, *supra* note 199, at 25. As Goleman explains, “[B]eing good at serving customers is an emotional competence based on empathy. Likewise, trustworthiness is a competence based on self-regulation, or handling impulses and emotions well.” *Id.*

208. Richard, *supra* note 206, at 19.

209. *Supra* notes 92-93 and accompanying text.

entertain other perspectives. Mindfulness practices also can produce compassion, generosity, and new understandings of self and others.<sup>210</sup> These outcomes can fuel the implementation of broader visions of lawyering.

Thus, mindfulness can help lawyers make discerning choices about law practice in general—e.g., whether, where, and how to practice—and about carrying out virtually any lawyering task, choices that might produce more satisfaction, for them and their clients. In the interests of economy, I will present examples of how mindfulness might fortify a lawyer's work in just two related spheres. The first deals with listening, reacting and responding; the second concerns negotiating.

a) *Listening, Reacting, Responding*

Good listening means paying attention both to the interaction between the lawyer and client and to what is going on inside the lawyer.<sup>211</sup> But this kind of attention takes a high degree of self-awareness and empathy, along with self-confidence, motivation, patience, and emotional self-control — the very capacities that mindfulness can produce.<sup>212</sup> Thus, mindfulness could help lawyers improve their ability to listen deeply—to themselves and others—and to respond appropriately, rather than react automatically based on established mind-sets and habits. This is how mindfulness has improved the listening skills of one bankruptcy attorney:

When Stacey is practicing mindfully and a colleague or opponent flies off the handle she tries to simply notice the feelings that come up for her without responding reflexively. Instead, she waits until she's ready. Oftentimes, she chooses to look more deeply, to consider what might be behind the outburst.

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210. *Supra* Part III.

211. See Marjorie A. Silver, *Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship*, 6 *CLINICAL L. REV.* 259 (1999). Commentators have provided a variety of suggestions for dealing with or avoiding situations in which preconscious or semi-conscious forces limit or control our actions. In their book on interviewing and counseling, for example, Professors Bastress and Harbaugh proffer a questionnaire that can help the lawyer uncover some such biases. ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING AND NEGOTIATING* 297 (1990). Doug Stone, Bruce Patton and Sheila Heen set out a series of suggestions for becoming more aware of—and achieving some distance from—one's internal voice, fears and emotions, which otherwise might severely limit one's ability to listen deeply. DOUGLAS STONE ET AL., *supra* note 121, *passim*.

212. See GOLEMAN, *WORKING WITH*, *supra* note 199, at 179-83. For an extensive treatment of the relationship between mindfulness and listening, see REBECCA Z. SHAFIR, *THE ZEN OF LISTENING: MINDFUL COMMUNICATION IN THE AGE OF DISTRACTION* (2000).

Maybe there's an illness in the person's family, or perhaps someone just told him off.

In the past, when an interview with a client was getting off track, Stacey became self-critical; internal voices told her she really didn't know what she was doing and even questioned her choice of work. Now when that happens, she just watches it happening, often noticing that her stomach is knotting up. She lets herself be aware of it all without having to get attached to it. She doesn't fight the voices or the physical sensations, so they have no real power over her. Suddenly she becomes aware that she can choose to work with the client in a different way. She stops, takes a mindful breath, and thinks about how she might connect with the person in her office in a way that helps them both find their way.<sup>213</sup>

Simply by listening carefully, deeply, and openly, a lawyer can relieve some clients' suffering and establish a connection that would be satisfying to both.<sup>214</sup> Such listening also can be essential if the lawyer is to help the client make wise decisions. Through such attentive listening, the lawyer can help the client understand her own needs and then select the most appropriate methods for addressing them. Mindfulness can help lawyers overcome barriers to attentive listening, including distracting thoughts and emotions, "personal agendas,"<sup>215</sup> and bias and prejudice based on the speaker's appearance, ethnicity, gender, speech or manner.<sup>216</sup>

Limiting mind-sets also can get in the way of deep listening. The Lawyer's Standard Philosophical Map, for instance, inclines a lawyer toward imposing a narrow, legalistic definition of the client's problem. It encourages the lawyer to see the client in terms of legal claims or injuries—a Sherman Act violation, a breach of contract, or a sponge left in the abdomen—rather than as a whole person, and to dominate the decision-making process, rather than allowing the client to participate actively.<sup>217</sup> In addition, it might induce him to assume too quickly that he understands the problem and knows the solution. This would limit the scope of his inquiry and impede his

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213. KEEVA, *TRANSFORMING PRACTICES*, *supra* note 47, at 70; *see also* Mocine, *supra* note 152 *passim*.

214. *See* SHAFIR, *supra* note 212, at 237-49.

215. SHAFIR, *supra* note 212, at 49.

216. *See* SHAFIR, *supra* note 212, at 59; Jeffrey Z. Rubin & Frank E.A. Sander, *Culture, Negotiation, and the Eye of the Beholder*, 7 *NEGOTIATION J.* 249 (1991).

217. *See* DOUGLAS E. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* (1977); Riskin, *Represented Client*, *supra* note 59.

ability to learn about the client's situation and make a deep connection with the client. Some divorce lawyers, for example, tend to accept a client's statement that she wants a divorce, without inquiring about all the client's circumstances and needs. In many instances, however, people involved in marital distress seek out a lawyer because they simply need to talk and do not have access to a friend, spiritual advisor, or psychotherapist.

Such tendencies toward regarding the client with a narrow, legalistic perspective—instead of really listening—can draw strength from a preoccupation with a variety of egocentric needs.<sup>218</sup> Thus, a lawyer's ability to listen deeply and openly—to be present—can be impaired not only by the endless stream of thoughts and sensations that pass through the lawyer's consciousness, but also by her need to express herself (perhaps spurred by impatience), to fulfill her own vision of what a lawyer should be or do, or to enhance or protect her self-esteem (e.g., by showing mastery or control).<sup>219</sup> Strong positive or negative feelings toward the client also can distract the lawyer,<sup>220</sup> as can an aversion to experiencing suffering, her own or others'. Egoistic needs can propel a lawyer, consciously or not, to steer clients toward legal work that will be more profitable for the lawyer—such as extensive litigation instead of a reasonable settlement.<sup>221</sup> They can influence the way she conceptualizes her relations not only with clients, but also with opposing counsel and with judges.

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218. These could be conscious or subconscious and could strengthen cravings for power, wealth, or stature. In the words of Yale Law School Dean Anthony Kronman:

Thus viewed from one perspective, an emphasis on money leads to a preoccupation with first-personal concerns that blocks the forgetfulness of self that sympathy requires. It makes it more difficult for a lawyer to get close to his client, to see the client's situation from within. But viewed from another vantage point, the same shift in attitude makes it harder for a lawyer to give business clients disinterested advice. . .

KRONMAN, *supra* note 46, at 300.

219. Robert Mnookin, Scott Peppet, and Andrew Tulumello have identified three "limiting assumptions" that keep lawyers from seeking information about their clients that would be necessary to "create value": "I know my client's interests—my client wants to win!"; "I know what my client's interests *should* be because I have been practicing in this area for many years."; "Asking questions about my client's interests makes me look foolish and uninformed." MNOOKIN ET AL., *supra* note 54, at 180. See generally Mocine, *supra* note 152.

220. See Silver, *supra* note 211 *passim* (arguing that emotional intelligence can help lawyers better address such problems).

221. See Langevoort, *supra* note 57, at 864 n.37, KRONMAN, *supra* note 46, at 300.

Ego-based cravings also can affect the way a lawyer relates to himself. It is common for some of us to define—and evaluate—ourselves by reference to our cravings. Thus, a lawyer with a high degree of ego-based cravings might judge himself a success or failure—and thus feel satisfied or dissatisfied—by reference to how well he was doing on the indices of money, power or recognition,<sup>222</sup> especially as compared to relevant others, which, of course, can lead to much unhappiness. Such ego needs also might affect the way a lawyer relates to colleagues in his own workplace. He might, for instance, be inclined to fight very hard to increase his share of profits, perhaps exploiting associates or disparaging the work of other lawyers.

Mindfulness can help lessen these kinds of problems and the suffering they bring about. It can do so by helping lawyers skillfully observe thoughts, intentions, and feelings—which can lead to a more reflective attitude toward a variety of ego needs and to the development of compassion, empathy and feelings of connection with others, and a commitment to service.<sup>223</sup> Dean Anthony Kronman has promoted the idea of the “good lawyer” as a “lawyer-statesman,” a person of “prudence or practical wisdom,” which involves “a certain calmness in his deliberations, together with a balanced sympathy toward the various concerns of which his situation (or the situation of his client) requires that he take account.”<sup>224</sup> This implies the need for a special ability to deliberate: “The sort of imaginative sympathy that deliberation requires combines two opposite-seeming dispositions, that of compassion, on the one hand, and that of detachment on the other.”<sup>225</sup> These are precisely the kinds of dispositions that mindful-

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222. Even such happiness as may result from satisfying such cravings does not last. Many people can never get enough of the objects of their craving. Cravings for more of the same—or for different things—will arise soon enough.

223. See *supra* notes 114-31.

224. KRONMAN, *supra* note 46, at 16.

225. *Id.* at 131. Dean Kronman explains further: “The detachment he brings to their cooperative inquiry is one of the main benefits a lawyer can offer such a client, and while it may be true that the client is paying for sympathy, it also is true that he is paying for calmness and distance as well. Only those lawyers who are able to combine the qualities of sympathy and detachment are thus able to give an impetuous client the advice he needs, even if it is not always the advice he wants.” *Id.* at 131. Paul Freund noted a similar need: “The lawyer-client relationship in counseling has about it something of the attitude of a sympathetic critic to a work of art—immersion and withdrawal—immersion lest he be pedantic and unfeeling, withdrawal lest he become bemused and sentimental.” Paul A. Freund, *The Legal Profession*, 1963 DAEDALUS 689, 693 (1963).

Of course, judges can benefit in similar ways. As Jon Kabat-Zinn said, commenting on meditation training he presented to trial court judges:

ness can nurture.<sup>226</sup> And these dispositions can affect a lawyer's relations, not only with his clients, but also with other lawyers, with judges, and ultimately, with himself.

b) *Negotiating*

(1) *Theoretical Considerations*

Similarly, mindfulness should be able to help lawyers negotiate better, by enabling them to enhance their awareness of, and distance from, limiting mind-sets and habitual behaviors associated with negotiation, and the impulses, assumptions and cravings that support them.<sup>227</sup> Commentators typically have divided approaches to negotiation into two categories, which are informed by radically different mind-sets. Thus, we have "adversarial" approaches, which are consistent with the Lawyer's Standard Philosophical Map, and "problem-solving" approaches, which are not.<sup>228</sup> Adversarial approaches rest on a belief in scarcity and separation, supported by the assumption that parties' interests are strictly opposed, which means that whatever one gains, the other loses. In such "win-lose" approaches,

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To do their job well requires enormous concentration and patience and both compassion and dispassion. They have to listen to a steady stream of sometimes painful and repugnant but mostly boring and predictable testimony while maintaining equanimity and dispassion and above all paying careful attention to what is actually happening in the courtroom. Having a systematic way of handling one's intrusive thoughts and feelings and reactions might be particularly useful professionally for a judge, in addition to being an aid in reducing his or her own stress levels.

KABAT-ZINN, FULL CATASTROPHE, *supra* note 10, at 125.

226. See *supra* notes 114-31 and accompanying text.

227. Many commentators have recognized the importance of self-awareness in negotiation. See, e.g., MNOOKIN ET AL., *supra* note 54, at 56, 203; Robert S. Adler & Elliot M. Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiation*, 5 HARV. NEGOT. L. REV. 1, 59-60 (2000).

228. I borrow this terminology from Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 767 (1984). There is no pervasively accepted system for classifying approaches to negotiation. Some commentators use three categories. For instance, Roger Fisher, William Ury and Bruce Patton use "hard," "soft," and "principled." FISHER ET AL., *supra* note 83. Donald Gifford uses "cooperative," "competitive" and "integrative" strategies. DONALD G. GIFFORD, *LEGAL NEGOTIATION: THEORY AND APPLICATIONS* (1989). Writers who have divided negotiation approaches into two categories have employed various pairs of terms. See e.g., Howard Raiffa uses "distributive" and "integrative." HOWARD RAIFFA, *THE ART AND SCIENCE OF NEGOTIATION* (1982). David Lax and James Sebenius distinguish between negotiating to "claim value" and "create value." DAVID LAX & JAMES SEBENIUS, *THE MANAGER AS NEGOTIATOR* (1986). Robert Mnookin, Scott Peppet and Andrew Tulumello use "value-distributing" and "value-creating." MNOOKIN ET AL., *supra* note 54.

negotiators tend to assert “positions” based on legal or moral entitlements or power. For instance, an adversarial move in a dispute involving a breach of contract might be to demand a fixed amount of money based on a legal argument and a prediction about what would happen in court. A negotiator employing such a move would simultaneously try to mislead the other side as to her client’s own situation and learn as much as possible about the other side’s situation.

The other approach to negotiation, called problem-solving, rests on a mind-set that seeks connection, rather than separation, and looks beneath surface positions to deeper needs or underlying interests. The goal of such “win-win” approaches is to satisfy such interests of both sides to the extent feasible by “expanding the pie” before dividing it or by developing mutually beneficial exchanges. In the breach of contract dispute, a problem-solving move would be to make relevant the client’s underlying needs, e.g., to protect its reputation or to deal with a cash-flow problem or to address troubles in the relations between executives in the two firms.

Proponents of problem-solving approaches to negotiation sometimes have presented them as alternatives to the traditional, adversarial approaches<sup>229</sup>—alternatives that promise better, more efficient, less traumatic, and more satisfying outcomes. But things are not so simple. Every thoughtful negotiator needs to be constantly aware of both kinds of approaches, because each can interfere with the other.<sup>230</sup> If the lawyers in the breach-of-contract example hide their client’s true interests and extol the strength of their legal claims and their commitment to a particular position, for example, they may have no opportunity to learn about or address either side’s real needs. On the other hand, if the negotiators, following a problem-solving approach, reveal such needs, they may render their clients vulnerable to exploitation by the other side. For instance, if the plaintiff reveals that he desperately needs cash, the defendant might insist on a much more favorable money settlement in exchange for a quick payment. Or if the defendant reveals her concern about reputation and her desire to protect it through confidentiality or continuation of the contract, the plaintiff might try to exact a price for helping satisfy that interest.

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229. See, e.g., FISHER ET AL., *supra* note 83.

230. See LAX & SEBENIUS, *supra* note 228, at 29-45; MNOOKIN ET AL., *supra* note 54, at 11-43.

This tension between adversarial and problem-solving approaches, known as the “negotiator’s dilemma,”<sup>231</sup> admits of no simple or routine solution. The thoughtful negotiator must hold this dilemma in her awareness at virtually all points before and during a negotiation and decide, moment to moment, whether and how to use or blend adversarial or problem-solving strategies and techniques.<sup>232</sup>

But teachers and trainers who have introduced law students and lawyers to problem-solving approaches have encountered three kinds of difficulties,<sup>233</sup> for which mindfulness might supply relief. The first is that the Lawyer’s Standard Philosophical Map is so deeply etched into the minds of some that they cannot or will not see the value of the broader approaches. The second is that many who do see the virtue in broader perspectives and even decide to employ them have trouble holding on to them, or carrying them out, in the fire of actual practice, and reflexively return to the adversarial approach. The third problem reverses the first two: some students and lawyers accept the interest-based approaches with too much enthusiasm and too little discernment. They completely abandon the adversarial perspective, ignoring the reality that interest-based approaches can render their clients vulnerable to exploitation. They become too open and collaborative, and not sufficiently protective of their clients’ interests.<sup>234</sup>

To perform well as a counselor or negotiator—to make and help the client make wise decisions—the lawyer must be able simultaneously to consider inconsistent perspectives (such as those associated with adversarial and problem-solving approaches).<sup>235</sup> Mindfulness can play a role in helping the lawyer do this. First, it can free a lawyer from habitual reliance on either mind-set, by helping her observe—without attachment—the thoughts, feelings and bodily sensations that typically make up and support these mind-sets. These mind-sets could derive from models or idealized versions of

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231. LAX & SEBENIUS, *supra* note 228, at 11-43.

232. *See id.* at 29-45; MNOOKIN ET AL., *supra* note 54, at 11-43.

233. Perhaps I should say that I have run into these difficulties, but in informal discussions, other teachers and trainers have acknowledged having comparable experiences.

234. *See* MNOOKIN ET AL., *supra* note 54, at 42-43 (asserting that many people tend to see negotiation as *either* adversarial *or* problem-solving). Similar problems can occur in other areas of law practice and in mediation.

235. Robert Mnookin, Scott Peppet, and Andrew Tulumello have argued that a lawyer’s ability to perform as a problem-solver and create value for her client depends on her ability to recognize and manage three major tensions: the tensions between creating value and distributing value; between empathy and assertiveness; and between principal and agent. MNOOKIN ET AL., *supra* note 54, at 9 *passim*.



how a lawyer should behave that were supplied by other lawyers, real or fictional or imagined, or mental “tapes” of his Uncle Max telling him not to be a chump. Such phenomena may rest beneath normal conscious awareness. Mindfulness can enable lawyers to notice them and recognize them as mere impermanent thoughts.<sup>236</sup> Consequently, instead of reacting automatically to them, the lawyer can adopt an attitude of curiosity, consider other options, and make a discerning decision. Second, mindfulness can help the lawyer uncover and gain distance from the effects of a preoccupation with self.<sup>237</sup> Such a preoccupation obviously might incline a lawyer to subscribe to the standard philosophical map and the associated adversarial approach to negotiation. It also can produce extremely adversarial behavior, primarily through the influence of egocentric cravings—such as those for money, status, or power.<sup>238</sup> A craving for power, for instance, might manifest in a need to dominate, defeat, or even humiliate opposing counsel, which could lead to excessively aggressive behavior that might in itself cause suffering and lead to unnecessary litigation.<sup>239</sup> Mindfulness meditation could help a lawyer deal with selfish needs in another way—by helping the lawyer develop a sense of compassion for and connection with other people, especially his clients and others affected by him (including those sitting across the table).<sup>240</sup>

Mindfulness also can help the negotiator better understand and deal with the emotions that affect all participants. Psychologist Daniel L. Shapiro suggests that “[y]ou can monitor the emotional climate of your negotiation by becoming aware of impulses, emotions, moods and attitudes—both yours and theirs”<sup>241</sup> and concludes that, in addition to attention to the substantive issues, “a mindful focus on the emotional terrain can lead us to improved substantive outcomes and stronger, more sustainable relationships.”<sup>242</sup> And it may be especially helpful when a negotiation situation threatens a lawyer’s sense of identity and competence; mindfulness can help the lawyer-negotiator to simply notice the manifestations of the experience of feeling threatened—e.g. increase in pulse, blood rushing to the brain,

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236. See *supra* notes 107, 122-24 and accompanying text.

237. See *supra* notes 124-25 and accompanying text.

238. See *supra* notes 57, 115-16 and accompanying text.

239. See *supra* note 57.

240. See *supra* notes 115-16 and accompanying text.

241. Daniel L. Shapiro, *A Negotiator’s Guide to Emotion: Four ‘Laws’ to Effective Practice*, DISP. RESOL. MAG., Winter 2001, at 3, 4.

242. *Id.* at 8.

fear, anxiety—and decide to let them go, and maybe to learn from them.<sup>243</sup>

## (2) Empirical Support

The foregoing argument is theoretical, of course, but some empirical research supports the idea that certain common outcomes of mindfulness meditation can have a beneficial impact on negotiation behavior. Mindfulness meditation often puts people in a good mood<sup>244</sup> and helps them develop compassion.<sup>245</sup> Research has demonstrated that negotiators who are in a good mood tend to do better at both adversarial and problem-solving activities in negotiations and to feel more satisfied with their performance and its outcomes.<sup>246</sup> Psychologist Joseph Forgas has produced evidence that negotiators who are in an experimentally induced good mood tend to plan and

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243. Jon Kabat-Zinn describes the value of proceeding on “two tracks” in times of emotional difficulty. On one track, we deal with the substantive issues; on the other, with emotional issues. KABAT-ZINN, *FULL CATASTROPHE*, *supra* note 10 at 330-32.

244. *See supra* note 114 and accompanying text.

245. *See supra* note 115 and accompanying text.

246. Leigh Thompson et al., *Some Like it Hot: The Case for the Emotional Negotiator*, in *SHARED COGNITION IN ORGANIZATIONS: THE MANAGEMENT OF KNOWLEDGE* 139, 142 (L. Thompson et al. eds., 1999). *But see* Roderick M. Kramer et al., *Self-Enhancement Biases and Negotiator Judgment: Effects of Self-Esteem and Mood*, 56 *ORGANIZATIONAL BEH. & HUM. DECISION PROCESSES* 110 (1993) (presents evidence that a positive mood sometimes produces worse results). For a discussion of the effects of mood on a person's tendency to attribute the cause of another's behavior to that person's attributes rather than the situation (known as the “Fundamental Attribution Error”), see Joseph P. Forgas, *On Being Happy and Mistaken: Mood Effects on the Fundamental Attribution Error*, 75, *J. PERSONALITY & SOC. PSYCHOL.* 318 (1998) [hereinafter Forgas, *Happy*]. For other discussions of the effect of affect or mood on negotiation, see Robert Baron, *Environmentally Induced Positive Affect: Its Impact on Self Efficacy, Task Performance, Negotiation, and Conflict*, 20 *J. APPLIED SOC. PSYCHOL.* 368 (1990); Bruce Barry & Richard Oliver, *Affect in Negotiation: A Model and Propositions*, 67 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 127 (1996); Rajesh Kumar, *The Role of Affect in Negotiations: An Integrative Overview*, 33 *J. APPLIED BEH. SCI.* 84 (1997). For a discussion of the effects of these factors on judgment, see Joseph P. Forgas, *Mood and Judgment: The Affect Infusion Model (AIM)*, 117 *PSYCHOLOGICAL BULL.* 39 (1995). In a forthcoming work, Clark Freshman, Adele Hayes and Greg Feldman provide a thorough and nuanced review of studies concerning the potential effects of mood on negotiation and a discussion of the extent to which mood may have a different impact on lawyers than other negotiators. Clark Freshman et al., *The Lawyer-Negotiator as Mood Scientist: What We Know and Don't Know About How Mood Leads to Successful Negotiation*, *J. DISP. RESOL.* (forthcoming 2002).

carry out more cooperative negotiation strategies and get better outcomes than negotiators in a bad mood.<sup>247</sup> To explain this, researchers have hypothesized that cooperative behavior (which may derive from more trusting attitudes) may stimulate reciprocal behavior in counterparts, more information exchange, and a heightened ability to recognize opportunities for interest-based solutions.<sup>248</sup> Conversely, negative affect seems to produce inferior outcomes in negotiation. Anger and lack of compassion toward negotiation counterparts may impair a negotiator's ability to assess both parties' interests.<sup>249</sup> Negotiators with high levels of compassion and low levels of anger (states that mindfulness meditation tends to induce) do better at collaborative negotiation.<sup>250</sup>

Emotional contagion—in this context, the idea that one negotiator's mood can spread to another negotiator—also may help explain some of these effects. Forgas found that the good mood of one negotiator seemed to induce cooperative behavior in the other.<sup>251</sup> This phenomenon illuminates the importance of a lawyer's "presence" (which may be affected by mindfulness) in virtually any sphere of activity.<sup>252</sup>

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247. See Joseph P. Forgas, *On Feeling Good and Getting Your Way: Mood Effects on Negotiator Cognition and Bargaining Strategies*, 74 J. PERSONALITY & SOCIAL PSYCHOL. 565 (1998) [hereinafter Forgas, *Feeling Good*]. The experimental negotiations did not allow for truly problem-solving or interest-based solutions. This study also showed that the strategies and tactics employed by negotiators who scored high on the indexes for Machiavellianism and for need for social approval were less affected by whether their moods were positive or negative. *Id.* at 572.

248. Thompson et al., *supra* note 246, at 143. It is possible that these and similar behaviors among "positive-affect negotiators" might help them overcome cognitive biases—such as partisan perceptions, judgmental overconfidence, loss aversion, endowment effects, reactive devaluation, and emotion—that might otherwise get in the way of "rational" negotiation behavior. For descriptions of such biases, see MNOOKIN ET AL., *supra* note 54, at 156-67.

249. *Id.*

250. See KEITH G. ALLRED ET AL., *The Influence of Anger and Compassion on Negotiation Performance*, in 70 ORGANIZATIONAL BEH. AND HUM. DECISION PROCESSES 175 (1997).

251. Forgas, *Feeling Good*, *supra* note 247, at 574.

Thompson, Nadler, and Kim describe three processes that seem to account for this phenomenon, which is not only familiar from every day experience, but also well documented in research: mimicry, emotional feedback (e.g., if I smile that may itself make me feel better), and actually feeling what the other person feels. Thompson et al., *supra* note 246, at 145-47.

252. See Daniel Bowling & David Hoffman, *Bringing Peace into the Room: The Personal Qualities of the Mediator and Their Impact on the Mediation*, 16 NEGOTIATION J. 5 (2000). Thompson, Nadler and Kim explain why emotionally-skilled negotiators are more effective:

First, the emotionally-skilled negotiator is more likely to have an accurate perception of the other parties as derived from his or her ability to detect emotions in his or her opponent. People who mimic emotions and experience

Of course, such enhanced performance should provide lawyers as well as their clients with higher levels of satisfaction.

c) *Other Aspects of Law Study and Lawyering*

It seems likely that the outcomes of mindfulness can help improve or enrich a law student or lawyer's performance on virtually any task, from learning and manipulating rules, to drafting documents and litigating cases.<sup>253</sup> In addition to the outcomes described above, mindfulness sometimes deepens and clarifies a person's

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emotional contagions are more accurate in judging the true emotions of the other person than those who do not catch others' emotions. Second, the emotional negotiator is more likely to be able to infect his or her opponent with emotion in a way that serves his or her interests. Third, the emotional negotiator is more likely to be able to develop and effectively utilize emotional systems on the same side and across the negotiating table.

Thompson et al., *supra* note 246, at 156. These conclusions resemble Daniel Goleman's explanation for the success of emotionally intelligent people in nearly every sphere of activity. See GOLEMAN, *WORKING WITH*, *supra* note 199, at 24-29, *passim*. Other explanations may derive from studies linking positive mood to creative thinking, Alice M. Isen et al., *Positive Affect Facilitates Creative Problem-Solving*, 52 J. PERSONALITY & SOCIAL PSYCHOL. 1122 (1987), flexible thinking, Noel Murray et al., *The Influence of Mood on Categorization*, 59 J. PERSONALITY & SOCIAL PSYCHOL. 411 (1990), and more motivated thinking, Grace H. Pretty & Clive Seligman, *Affect and the Overjustification Effect*, 46 J. PERSONALITY & SOCIAL PSYCHOL. 1241 (1984).

The idea that emotional intelligence or certain by-products of mindfulness meditation can improve lawyers' negotiation performance also finds support in a recent study conducted by Professor Andrea Kupfer Schneider to update a well-know study by Professor Gerald Williams. Andrea Kupfer Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143, (2002). She asked lawyers to recall their counterparts in a recent negotiation, to label them either "effective" or "ineffective," and to identify adjectives, from a list presented, that described their behavior in the negotiation. Then she clustered the negotiators into two groups, which she called "Problem-Solving," and "Adversarial." More than fifty percent of the problem-solving lawyers were perceived as effective, while only nine percent of the adversarial lawyers were seen as effective. *Id.*

253. See James McHugh, *Zen and the Art of Lawyering*, 39 VILL. L. REV. 1295 (1994). In the words of Professor Charles Johnson of the University of Washington English Department:

Yet it matters not at all if the activity we're talking about is writing a novel, preparing dinner, teaching a class, serving tea, or simply walking, the spiritual point is everywhere and always the same: Any action is performed best and most beautifully, especially unpleasant tasks, when the actor practices what the Buddhists call "mindfulness;" when he is wholly and selflessly aware of every nuance in the activity and immersed in it; when he gets the gossamer-thin illusion of the self out of the way and, in a delightful modulation of consciousness and temporality, experiences only the "here" and the "now," with no concern at all for the unrecoverable past or a future that never comes.

Charles Johnson, *The Elusive Art of "Mindfulness"*, THE CHRONICLE REV., April 13, 2001 (available at <http://chronicle.com/weekly/v47/i31/31b01001.htm>).

awareness. Jerry Conover, of counsel to Faegre and Benson in Denver, says that it affects his overall state of mind, giving him a “balancing and bottoming perspective that is unshakeable.”<sup>254</sup> Steven Schwartz, head of a public interest disability law firm based in Northampton, Massachusetts, says that it helps him think creatively.<sup>255</sup> Sometimes when he is meditating, without trying for anything, solutions to practical problems in the office occur to him; on some days, the outline of an entire brief will come to him, and, he says, “[i]t is sublimely, precisely correct.”<sup>256</sup> In addition, the practice helps him connect with his feelings of compassion for his clients. “It is singularly why,” Schwartz says, “I’ve been able to do the same work for twenty-seven years without being overwhelmed by the pain and my feelings for these devalued people.”<sup>257</sup> It has also deepened his understanding of the motives of people involved in his cases and keeps him motivated for “the long haul.”<sup>258</sup> The peaceful presence of a lawyer who practices mindfulness meditation is likely to affect the client, too.<sup>259</sup>

### 3. *Roles and Places of Mindfulness Meditation in the Legal Community*

As I have suggested above, goals for mindfulness meditation can range from spiritual enlightenment, to feeling and performing better, to just lightening up. Any of these goals, and a number of others, might inspire organizations to sponsor meditation programs and prompt law students and lawyers to participate in them.<sup>260</sup> The

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254. Telephone Interview with Frederic “Jerry” Conover, Of Counsel to Faegre & Benson, Denver, Colo. (Oct. 9, 1999).

255. See KEEVA, *TRANSFORMING PRACTICES*, *supra* note 47, at 51.

256. *Id.* at 52.

257. *Id.* at 53.

258. *Id.* at 54. Schwartz is one of a number of American lawyers whose work draws on Buddhist teaching and precepts. See Mary Talbot, *No Justice, No Peace*, *TRICYCLE: THE BUDDHIST REVIEW*, Fall 2000, at 44.

259. Philadelphia lawyer-mediator Sam Rossitto often begins family mediation sessions with a moment of silence. Telephone Interview with Sam Rossitto, lawyer-mediator, in Philadelphia, PA (Mar. 6, 2001). “In certain instances (‘when it doesn’t seem too flaky’), he’ll encourage mediation participants to observe a few moments of silence, to breath deeply, to collect their thoughts, to enter what he calls ‘a prayerful state.’” Art Carey, *Finding Yoga is Good for Mediation and Meditation*, *PHILADELPHIA INQUIRER*, Feb. 1, 1999, at D1, D4.

260. Here is a convenient summary of goals people have associated with mindfulness meditation practice that may impel its development in the legal community:

1. Impact on Participants
  - Bonding with colleagues
  - Relaxation
  - Stress relief

goals should dictate the nature, format and location of the instruction, although it is important to remember that outcomes do not always correspond to goals.<sup>261</sup>

To the extent that mindfulness meditation can help students and lawyers deal with stress, it may have a place in the law school and practice worlds alongside counseling and other assistance programs designed to enable students and lawyers to cope with the pressures of their lives.<sup>262</sup> To the extent that it can help lawyers perform better, mindfulness meditation could prove useful in connection with a variety of courses and training programs. The most obvious of these include law school courses that involve professional-client interaction—either real or simulated—such as live-client law clinics<sup>263</sup> (and mediation clinics) or clinical placement supervision courses; simulation-

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- Happiness
  - Enhanced efficiency in work
  - Improved concentration
  - Enhanced creativity
  - Enhanced ability to make and carry out ethical decisions
  - Enhanced (and possibly new kinds) understanding of self and others
  - Enhanced compassion for self and others
  - Enhanced ability to work with others
  - Enhanced ability to carry out many functions
  - Enhanced ability to rely on one's intuition
  - Increased satisfaction with work
  - Spiritual freedom (in varying degrees), (e.g., new understandings of the nature of reality and one's relation to it).
2. Impact on Others
- Providing more efficient service to clients.
  - Providing service to clients that is
    - more responsive to clients' actual needs
    - more satisfying to clients
    - more compassionate
  - Interacting with others in ways that are more collaborative and yet protective of client interests
  - Modeling healthy, balanced professional lifestyles.

261. See *supra* notes 68-77 and accompanying text.

262. See *supra* note 131 and accompanying text.

263. It may be especially useful to teach clinical students mindfulness meditation techniques to prepare them for difficult interactions with real clients who may be suffering greatly. It is common in such situations for students (as well as lawyers) to narrow the focus of the interaction as a way of protecting themselves from the strong emotions that such interactions might arise. At the University of Massachusetts Medical School, Saki Santorelli and Elana Rosenbaum teach mindfulness meditation to medical students just before they dissect the faces on their cadavers. The theory is that often medical students shut down emotionally when they dissect the faces on their cadavers, and this begins a process of dehumanization that helps physicians cope with the emotions precipitated by the work they do. It is a form of coping based on shutting out certain kinds of feelings. In contrast, mindfulness teaches them to cope with such emotions by acknowledging or confronting (or going deeply into) them.

based courses, such as Trial and Pretrial Practice, Lawyering Process, Client Interviewing and Counseling, Negotiation,<sup>264</sup> Mediation, and Alternative Dispute Resolution; as well as courses that emphasize creativity, judgment, and problem-solving.<sup>265</sup> Of course the practice also would fit into CLE programs that deal with similar activities. In addition, routine outcomes of mindfulness practice could help students and lawyers do better at virtually any lawyering activity,<sup>266</sup> including traditional tasks such as learning, understanding, and manipulating rules of law,<sup>267</sup> drafting documents and litigating cases. In addition, it can help improve classes by helping students focus better, which should lead to more learning and greater satisfaction. My students and I experienced this in my Fall 2001 course "Understanding Conflict," in which I started nearly every three-hour session with a meditation. Professor Majorie Corman Aaron described what happened when she used a brief mindfulness

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Interview with Elana Rosenbaum, Senior Instructor, Center for Mindfulness in Medicine, Health Care and Society, University of Massachusetts Medical School, in Worcester, Mass. (June 5, 2000).

Similarly, it might be useful to teach mindfulness techniques to law students or lawyers, or judges who are preparing for clinical experiences in which they will deal with people who are suffering greatly. The experience of a leading practitioner and scholar of victim-offender mediation supports this notion:

The Buddhist practice of mindfulness has proven to be very helpful to me over the years, particularly in my use of a humanistic "dialogue driven" approach to mediation in the work I am involved in with parents of murdered children and other victims of severe violence who want to meet the inmate.

Email message to Leonard L. Riskin from Mark Umbreit, Professor of Social Work, University of Minnesota (Nov. 9, 2001).

264. See *supra* note 178 and accompanying text regarding Clark Freshman and Adele Hayes' work at the University of Miami; see also *supra* note 156.

265. See *supra* notes 155-61 and accompanying text.

The "human arts of lawyering" are especially relevant to courses such as these, see Gary Goodpaster, *The Human Arts of Lawyering: Interviewing and Counseling*, 27 J. LEGAL ED. 5 (1975-76), but they also bear on every aspect of law practice. And law schools have, in the main, badly neglected these "human arts." Professor Carrie Menkel-Meadow has argued for the importance of teaching lawyers to "feel with' others."

[W]hat I mean is a willingness to truly apprehend the reality of the other (be it client or administrative bureaucrat or opposing counsel) not just to understand instrumentally how to move, persuade or affect that person, but to understand what meaning the interaction has for the person in a caring and existential sense.

Carrie J. Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the McCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 620 (1994). As mentioned *supra*, mindfulness practice is an excellent way to develop the capacity for empathy.

266. See *supra* note 196-226 and accompanying text.

267. See McHugh, *supra* note 253, at 1301.

meditation exercise in a Mediation course at the University of Cincinnati College of Law:

[T]he “feel” of the class discussion was different, and great! Please understand, this class was at 3:00 on the last day of classes for the semester—last class in law school for the 3Ls, which were most of the mediation class. Normally [the class met] 3:00-6:00, we had added some to the previous session so that we could end at 4:00, and students could go to the end-of-the-year party—at which there would be skits, awards, etc.

As one of my students remarked, the exercise changed everything, without it people would have been understandably distracted. But, the class was focused, involved in the discussion, reflective. Everything else disappeared.<sup>268</sup>

And Professor Scott Peppet, who integrated mindfulness meditation into a session he led at the Utah Dispute Resolution Conference, wrote, “it felt great to teach this segment this way. I’ve taught the pieces without the meditation, and it just has never worked as well or felt as right. One of the more enjoyable, and, I think, most impactful sessions I’ve ever led anywhere.”<sup>269</sup>

I have emphasized the role of mindfulness *meditation* in cultivating mindfulness skills that law students and lawyers can apply in their work and everyday lives. However, such forms of awareness also can be developed, to a lesser extent, by integrating self-awareness into teaching through brief exercises designed to help students focus in the moment on the thoughts and bodily sensations stimulated in them by various learning or practice situations.<sup>270</sup>

### C. *Potential Concerns About Introducing Mindfulness Meditation to the Legal Community*

The introduction of mindfulness meditation to the legal community might raise a variety of concerns. For example, some lawyers who do not experience or recognize the set of problems facing the profession that I described in Part I may simply not see the value of mindfulness meditation. Others may prefer different approaches

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268. Aaron, *supra* note 178.

269. Peppet, *supra* note 156.

270. Thus, for instance, a number of teachers, myself included, have followed the practice of ringing a bell during a classroom activity to signal that students should stop talking and writing and simply notice their breath or bodily sensations or thoughts. Of course, such methods will be more effective if students have had prior exposure to mindfulness meditation.



that could help address some of these problems, such as more recreation, psychotherapy or counseling, other contemplative practices, prayer, or Prozac.

In this section, however, I want to address a different set of concerns, which are based on the idea that the introduction of mindfulness meditation might threaten the legal profession or values or conduct that are important to it. I suggested above that mindfulness meditation has the potential for undermining the hegemony of the Lawyer's Standard Philosophical Map, and I presented a number of ways in which that could benefit lawyers and clients. But the traditional lawyer's paradigm has great virtues.

In many cases, lawyers must use it. Most clients and judges expect them to. Moreover, the adversary-rule perspective from which the standard map is drawn has real strengths. It promotes a loyalty to clients. It encourages vigorous presentation of competing positions and interests. The rule orientation fosters in the lawyer an allegiance to the system of laws, which in turn serves to unify society, to provide a measure of security of expectations, and to keep open the possibilities of fairness between persons irrespective of status, and of vindication of the rights of the downtrodden.<sup>271</sup>

By undermining the hegemony of the lawyer's standard philosophical map, mindfulness meditation might seem to threaten important values and established perspectives and behaviors that derive from it. Some might fear that the development of compassion, a deeper understanding of one's own motives and a commitment to ethical decision-making might make it difficult for some lawyers to undertake certain activities that are widely—but not universally—considered essential for proper lawyering. Some might worry, for instance, that a lawyer who develops great compassion for others might not be willing to tear down a hostile witness in a trial, twist the facts, or otherwise push hard enough for her clients' positions. Although I would not deny the possibility of such developments, they seem quite unlikely. Compassion can provide strong motivation to act; in the words of Sharon Salzberg:

Compassion is not at all weak. It is the strength that arises out of seeing the true nature of suffering in the world. Compassion allows us to bear witness to that suffering, whether it is in ourselves or others, without fear; it allows us to name injustice

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271. Riskin, *Mediation and Lawyers*, *supra* note 54, at 58.

without hesitation, and to act strongly, with all the skill at our disposal.<sup>272</sup>

Thus, compassion can help nurture a service orientation in some lawyers and law students and connect them with service-oriented motivations that brought them into the profession. And equanimity can provide the patience, balance and judgment—perhaps the “prudence” described by Anthony Kronman<sup>273</sup>—to make discerning decisions about how to respond.<sup>274</sup>

Some might entertain a contrasting worry—that the ability to observe one’s thoughts and feelings with equanimity could allow some lawyers to become increasingly comfortable engaging in excessively egocentric or adversarial behavior. Although this could happen, it is highly unlikely for three reasons: first, because teachers of mindfulness meditation almost always include components on ethics and morality; second, because they often include meditations designed to develop states of mind that would block such behavior, such as compassion, loving-kindness, sympathetic joy, and empathy;<sup>275</sup> and third, because such positive states of mind develop routinely in the course of extensive mindfulness meditation practice.

Some might also fear that that mindfulness might produce a decline in ego-centered ambitions and tension or stress that are essential for some students and lawyers to work hard enough to develop the knowledge and skills necessary for their careers<sup>276</sup> or that the growth of self-knowledge might impel some law students and lawyers to drop out of the profession. Surely that can happen in rare cases. But these concerns seem vastly outweighed by the greater likelihood that mindfulness will enable lawyers and law students to make and carry out good judgments.

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272. SALZBERG, *supra* note 115, at 103. Most teachers of mindfulness meditation also teach meditations designed to produce in the short term certain positive states of mind—such as loving-kindness, compassion, sympathetic joy, and equanimity—that seem to arise naturally as the result of long-term mindfulness practice. *Id. passim*.

273. See *supra* text accompanying notes 77-78, 201, 207-08 and accompanying text.

274. See SALZBERG, *supra* note 115, at 146.

275. See SALZBERG, *supra* note 115, *passim*.

276. See Daicoff, *supra* note 33, at 1418; Benjamin et al., *Role of Legal Education*, *supra* note 33, at 252 (acknowledging viewpoint that “increased psychological distress is for many students essential for learning quality, adversarial practice skills” and raising the question of associated costs to their law practices and personal lives).

## CONCLUSION

No one can reasonably predict the impact of mindfulness meditation instruction and practice on a particular individual—or even on the profession. The potential benefits of mindfulness that I have described are based on aspirations for helping lawyers feel and perform better, derive and deliver more satisfaction in their work, and relieve suffering in themselves and others. The concerns I set forth result from fears that mindfulness practice might induce changes that could undermine existing perspectives and practices that have great value. Most of these fears rest on the assumption that mindfulness meditation could lead the lawyer or student to a lack of balance. And that risk is as real in meditation practice as it is with any other activity one might pursue, such as golf, music or community service.

Could mindfulness itself provide the solution? Mindfulness is a premier method for creating balance. The practice does not bring out exclusively rose-colored visions of people and society. At its very best, mindfulness practice can help lawyers see things as they actually are, to hold in their awareness dramatically inconsistent thoughts and impulses and beliefs. Thus, mindfulness, properly practiced, ought not exclude traditional, adversarial perspectives from a lawyer's consciousness. It should not disable lawyers from doing what is necessary to protect their clients. Instead, it should allow them to see virtually all perspectives. Thus, it can help them accept the reality and the impermanence of greed and selfishness—as well as kindness and generosity—in themselves and others. This understanding, supported by patience, wisdom, and compassion, might help lawyers maintain the clarity and delicate balance essential for making wise choices.