

HEINONLINE

Citation: 7 Harv. Negot. L. Rev. 125 2002

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Wed Feb 20 17:42:22 2013

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=1556-0546](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=1556-0546)

What's Special About Meditation? Contemplative Practice for American Lawyers

William S. Blatt†

I. INTRODUCTION

There are many ways to explain meditation, what it is, what it does, how it works. Meditation, it is said, is a way to evoke the relaxation response. Meditation, others say, is a way to train and strengthen awareness; a method for centering and focusing the self; a way to halt constant verbal thinking and relax the body mind; a technique for calming the central nervous system; a way to relieve stress, bolster self-esteem, reduce anxiety, and alleviate depression.

All of those are true enough; meditation has been clinically demonstrated to do all of those things. But I would like to emphasize that meditation itself is, and always has been, a *spiritual* practice. Meditation, whether Christian, Buddhist, Hindu, Taoist or Muslim, was invented as a way for the soul to venture inward, there ultimately to find a supreme identity with Godhead. 'The Kingdom of Heaven is within'—and meditation, from the very beginning, has been the royal road to that Kingdom. Whatever else it does, and it does many beneficial things, meditation is first and foremost a search for the God within.¹

In the last thirty years, many have taught meditation in America. Maharishi Mahesh Yogi² and Herbert Benson³ have long

† Professor of Law, University of Miami School of Law. I thank Clark Freshmen for our conversations on this paper.

1. KEN WILBER, *GRACE AND GRIT: SPIRITUALITY AND HEALING IN THE LIFE AND DEATH OF TREYA KILLAM WILBER* 76 (1993).

2. See MAHARISHI MAHESH YOGI, *THE SCIENCE OF BEING AND ART OF LIVING* (1966).

3. See HERBERT BENSON, *THE RELAXATION RESPONSE* (1975).

taught concentrative techniques, in which the mediator focuses attention on a single word or mantra.⁴ More recently, the Insight Meditation Society (IMS)⁵ and Jon Kabat-Zinn,⁶ among others,⁷ have taught mindfulness meditation, also known as insight meditation or vipassana, in which the mediator cultivates an unattached awareness of one's self and surroundings.⁸ Hindus and Christians favor concentrative techniques; Buddhists, particularly those from the Theravadin school, give more attention to mindfulness.⁹

The medical community has long recognized that meditation promotes relaxation and physical well being.¹⁰ To these benefits, Professor Leonard Riskin adds emotional intelligence. Specifically, Riskin suggests that mindfulness meditation can alleviate professional dissatisfaction and free lawyers from the adversarial mindsets that interfere with listening and negotiation.¹¹

Professor Riskin's position is far too modest. Meditation is no mere self-improvement tool; it is a spiritual practice. It does more than generate good feelings or superior performance; it transforms our sense of self and the world. Thus understood, meditation offers an antidote to what ails the profession—one which is both more powerful and more controversial than Riskin admits.

This response falls into two parts. Part one scrutinizes Riskin's claim that mindfulness meditation enhances emotional intelligence.

4. The Maharishi teaches transcendental meditation, in which the mediator receives a secret word or sound to repeat mentally while sitting comfortably. Assuming a passive attitude, he or she goes back to the mantra if thoughts come into his or her mind. See BENSON, *supra* note 3, at 85.

5. See JOSEPH GOLDSTEIN & JACK KORNFELD, *THE PATH OF INSIGHT MEDITATION* (1995); JOSEPH GOLDSTEIN, *THE EXPERIENCE OF INSIGHT* (1983).

6. See JON KABAT-ZINN, *FULL CATASTROPHE LIVING* (1990).

7. See, e.g., STEPHEN A. LEVINE, *A GRADUAL AWAKENING* (1979). See also THICH NHAT HANH, *THE MIRACLE OF MINDFULNESS: A MANUAL OF MEDITATION* (1976) (describing mindfulness within Zen Buddhism).

8. Mindfulness meditation typically begins with a focus on breathing. As the meditation progresses, however, the mediator expands awareness to include sounds, images, body sensations, feelings and thoughts, labeling them as they occur. See GOLDSTEIN & KORNFELD, *supra* note 5, at 36-53; KABAT-ZINN, *supra* note 6, at 64.

9. See, e.g., S.N. Goenka, *Moral Conduct, Concentration and Wisdom*, in *ENTERING THE STREAM* 96, 111 (Samuel Bercholz & Sherab Chodzin Kohn eds. 1993) (claiming that the development of insight is the "unique element" in the Buddha's teachings, "to which he gave the highest importance"); EDWARD CONZE, *BUDDHIST MEDITATION* 28 (1956) (noting that mindfulness "occupies a central place in Buddhism, much more so than in other religious or philosophical traditions").

10. See KABAT-ZINN, *supra* note 6; BENSON, *supra* note 3.

11. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 *HARV. NEGOT. L. REV.* 1, (2002) [hereinafter Riskin, *Contemplative Lawyer*].

It argues that the experience of mediators and scientific research both indicate that psychological techniques more effectively cultivate such intelligence. Emotional intelligence entails something more than self-awareness. It requires a change in thinking.

Part two of the response challenges Riskin's effort to sever meditation from religion. That part argues that religious intention is central to meditation. While such intention need not posit a God, it does provide a vision of life's ultimate purpose. Such a vision is potentially controversial. Yet, at the same time, it offers a potent remedy for lawyer dissatisfaction. The vision most relevant to American lawyers, however, is found in the Western religions, not Buddhism.

II. MINDFULNESS MEDITATION AND EMOTIONAL INTELLIGENCE

Professor Riskin argues that mindfulness meditation induces relaxation and awareness,¹² and that this state of mind in turn improves performance, particularly the social skills associated with lawyering.¹³ Riskin relies heavily¹⁴ on psychologist Daniel Goleman's survey of the scientific research on emotional intelligence,¹⁵ the interpersonal aptitudes that lead to success in life.¹⁶

Although mindfulness meditation may increase emotional intelligence, the link is far weaker than Riskin admits. Evidence from mediators, as well as Goleman's work itself, indicates that meditation does relatively little to foster emotional intelligence. For this purpose, psychotherapy and other psychological approaches prove more effective.

A. *The Experience of Mediators*

The experience of mediators indicates that meditation is a rather ineffective means for increasing social skills. As Riskin admits,¹⁷ many mediators have difficulty integrating their insights into everyday life.¹⁸ For example, IMS co-founder, Jack Kornfield spent ten

12. *See id.* at 630.

13. *See id.* at 642.

14. *See id.* at 646.

15. *See* DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (1995).

16. *See id.* at 39 (discussing "personal intelligences," the precursor of "emotional intelligence").

17. *See Riskin, supra note 11, n.131* ("People who do develop great mindfulness skills and experience significant insights face challenges integrating them into their everyday lives.")

18. *See* JACK KORNFIELD, *A PATH WITH HEART* 7 (1995) (observing that "we encounter graceful masters of tea ceremonies who remain confused and retarded in intimate relations, [and] yogis who can dissolve their bodies into light, but whose wisdom

years practicing mindfulness meditation as a monk in Burma. Upon returning the United States, however, he reported "I possessed very few skills for dealing with my feelings or for engaging on an emotional level or for living wisely with my friends and loved ones."¹⁹ Similarly, journalist Tony Schwartz found that "no amount" of mindfulness meditation resolved the familiar and repetitive conflicts of his everyday life.²⁰ Such experiences should not surprise. Meditation is simply not designed to promote personal growth.²¹ Indeed, it may presume such growth.²²

Like many mediators,²³ Kornfield and Schwartz both found psychotherapy a superior tool for developing social skills.²⁴ Kornfield became a therapist and discovered, "There are many areas of growth (grief and other unfinished business, communication and maturing of relationships, sexuality and intimacy, career and work issues, certain fears and phobias, early wounds, and more) where good Western

vanishes when they enter the marketplace."); Georg Feuerstein, *The Shadow of the Enlightened Guru*, in *PATHS BEYOND EGO* 147, 148 (Roger Walsh and Frances Vaughn eds., 1993) [hereinafter *PATHS*] (observing that "many mystics and adepts are highly eccentric and authoritarian and appear socially to have weakly integrated personalities").

19. See KORNFIELD, *supra* note 18, at 249.

20. See TONY SCHWARTZ, *WHAT REALLY MATTERS* 328-29 (1995) (Although mindfulness meditation was useful, "there remained a level at which neither [vipassana nor a similar] practice fundamentally transformed the underlying feelings that troubled me. It wasn't finally enough to work just on shifting my placement of attention [W]here negative emotions ran deepest, they invariably resurfaced, particularly in times of stress and in my closest relationships. No amount of meditation seemed to resolve these familiar and repetitive conflicts.").

21. See Jack Kornfield, *Even Mediators Have Old Wounds*, in *PATHS*, *supra* note 18, at 67 ("For most people, meditation practice doesn't 'do it all.'"); SCHWARTZ, *supra* note 20, at 365-66 (In vipassana, "[t]he personal dimensions are ignored altogether, and in traditional practice there is scant attention paid to how to integrate these higher states into ordinary life and practice"); Feuerstein, *supra* note 18, at 148 ("all self-transcending methods involve a degree of self-transformation. But, as a rule, this does not entail a concerted effort to work with the shadow and accomplish psychic integration.") (quoting Ken Wilber). Psychologist and meditation teacher John Engler observes that vipassana does not address the question of how to "regrow" a basic sense of self or how to differentiate and integrate a stable, consistent and enduring self representation," the issue addressed in psychotherapy. John H. Engler, *Becoming Somebody and Nobody: Psychoanalysis and Buddhism*, in *PATHS*, *supra* note 18. See also KEN WILBER, *THE SPECTRUM OF CONSCIOUSNESS* 282 (1993) (describing a mediator who experienced visions that would have been easily treated by psychotherapy).

22. See Goenka, *supra* note 9, at 97-98 (stating that moral practice must precede the development of insight). See also *infra* notes 113-15.

23. See KORNFIELD, *supra* note 18, at 247-49, 250-51 (describing four long-term mediators who required therapy).

24. See *id.* at 7 (describing use of group and individual therapy); SCHWARTZ, *supra* note 20, at 428-29 (describing his use of psychotherapy).

therapy is on the whole much quicker and more successful than meditation."²⁵ Even IMS co-founder Joseph Goldstein, who remains committed to meditation as a complete path,²⁶ has used psychotherapy for personal issues.²⁷

Clinical studies of persons suffering from chronic back pain confirm the limitations of mindfulness meditation. The mindfulness meditation taught at Kabat-Zinn's stress reduction clinic reduces such pain, but only a minority of mediators became pain free.²⁸ By contrast, John Sarno, at NYU's Rusk Institute of Rehabilitative Medicine, gives his patients formal lectures explaining the emotional genesis of back pain.²⁹ After these lectures, the vast majority of his patients report little or no pain.³⁰ These contrasting results indicate that meditation does not directly address emotional issues.³¹

25. See Kornfield, *supra* note 21, at 68.

26. See SCHWARTZ, *supra* note 20, at 307. This difference in opinion reflects Goldstein's more monastic lifestyle. Childless, he lives next to the meditation society and goes on long retreats. See *id.* at 331 ("There's the feeling about Joseph of a monastic, someone who wants to get off the wheel and isn't that concerned about going back to live in the world.") (quoting a close friend).

27. See *id.* at 336 ("My experience in meditation it that is deals with the issues that arise organically, but that it does not necessarily focus one's attention on them, or pursue them, or dig into them. For me, therapy has been a way of focusing on particular issues.") (quoting Goldstein). Thus, Goldstein may not disagree with Kornfield on the efficacy of psychotherapy. He may simply be less interested in personal growth. See *id.* at 329 ("For me, what's been most important is to aim for the highest liberation of the mind. I see a tendency to let go of that goal and instead become satisfied with something less: doing good in the world, having more harmonious relationships, seeking a happier life. That all beautiful, but in my view, it misses an essential point.") (quoting Goldstein).

28. See *id.* at 219 ("Just take the example of chronic back and neck pain patients, who represent a significant percentage of those who attend Kabat-Zinn's program. While most of them experience measurable relief through mindfulness meditation—including the ability to view their pain with a greater degree of detachment—Kabat-Zinn himself acknowledges that only a minority become pain free.").

29. See *id.* at 196.

30. See *id.* at 195 (in follow-up survey of patients, 76 percent reported little or no pain and sixteen percent were unchanged); *id.* at 195-96 (in follow-up survey of patients diagnosed with herniated discs, 88 percent reported little or no pain, and only two percent were unchanged).

31. See *id.* at 219 ("The explanation [for the failure of mindfulness meditation to eliminate back pain] is that meditation by itself fails to sufficiently address what John Sarno has identified as the underlying cause of many pain syndromes—namely, unacknowledged emotional conflict, most often anger. Mindfulness meditation doesn't seek to work through such feelings. Sarno addresses them head on, and that may help explain why his approach so regularly prompts a full resolution of symptoms, while Kabat-Zinn's often does not.").

B. Goleman's Work

The superiority of psychological approaches is also suggested by Daniel Goleman's work. A close reading of the research he surveys shows that meditative consciousness bears only limited relevance to emotional intelligence, which consists of five skills.³² Admittedly, by fostering self-awareness, mindfulness meditation may further the first skill, knowing one's emotions,³³ which is the "keystone"³⁴ of emotional intelligence. Yet, the self-awareness required for emotional intelligence differs substantially from that cultivated in mindfulness meditation. Emotional intelligence involves a specialized self-awareness. This awareness focuses solely on emotions, not on the wide array of sounds, images, sensations, and thoughts observed during mindfulness meditation.

The self-awareness critical to the second skill, managing emotions, differs even more from the attitude cultivated during formal meditation. Managing emotions does not rely on the prolonged detachment present in meditation. Instead, that skill entails the recognition of an emotion, followed by a challenge to the thought that triggered the emotion. Mindfulness meditation makes no such challenge.

Take, for example, Goleman's method for soothing anxiety. He prescribes a "combination of mindfulness and healthy skepticism."³⁵ The first step is self-awareness, catching a worrisome episode as soon as possible, so that one can apply a relaxation technique.³⁶ But, "[t]he relaxation method, though, is not enough in itself. Worriers also need to actively challenge the worrisome thoughts; failing this, the worry spiral will keep coming back."³⁷ The next step is taking "a critical stance" by asking questions that challenge one's underlying assumptions. One might ask, for example: "Is it very probable that the dreaded event will occur? Is it necessarily the case that there is only one or no alternative to letting it happen? Are there constructive steps to be taken? Does it really help to run through these same

32. See GOLEMAN, *supra* note 15, at 43. These skills are "knowing one's emotions," "managing emotions," "motivating oneself," "recognizing emotions in others," and "handling relationships." *Id.*

33. See *id.* (equating self-awareness with "recognizing a feeling *as it happens*") (emphasis in original).

34. *Id.*

35. *Id.* at 69.

36. See *id.* at 68-69.

37. *Id.* at 69.

anxious thoughts over and over?"³⁸ By contrast, mindfulness meditation prescribes only nonjudgmental observation.³⁹

Furthermore, self-awareness becomes progressively less important to the remaining three emotional intelligence skills. In the third skill, motivating oneself, such awareness plays a limited role. Self-awareness helps control distracting thoughts,⁴⁰ but does not actually generate motivation.⁴¹ Goleman does not mention self-awareness with respect to the last two skills, empathy and handling relationships. In fact, both skills are at odds with mindfulness. Empathy involves unconscious mimicry of others,⁴² not the deliberate self-examination associated with meditation. Handling relationships requires acting skills that can actually suppress such examination.⁴³

Given this research, it is not surprising that Goleman does not discuss meditation in his book on emotional intelligence.⁴⁴ As Goleman observes elsewhere, the strength of Western psychology lies in its description of waking state awareness, where it "has charted aspects of what would be called 'karma' in the East in far greater detail and complexity than any Eastern school of psychology."⁴⁵

Thus, Goleman's favorite tool for developing emotional intelligence is psychotherapy,⁴⁶ particularly cognitive therapy.⁴⁷ Psychotherapy utilizes awareness, not for its own sake, but to clear a space

38. *Id.*

39. Goleman describes a similar approach to anger. Here, one uses "self-awareness to catch cynical or hostile thoughts as they arise, and write them down. Once angry thoughts are captured this way, they can be challenged and reappraised." *Id.* at 64. See also *id.* at 62 ("One way of defusing anger is to seize on and challenge the thoughts that trigger the surges of anger.")

40. See *id.* at 78-86 (describing how self awareness helps one to master the distracting emotions that interfere with concentration).

41. See *id.* at 86-95.

42. See *id.* at 98 (mimicry in infants); *id.* at 104 (research indicating that the physiology of empathetic spouses track one another); *id.* at 146 (use of mirroring in marital therapy).

43. See *id.* at 119 ("People who make an excellent social impression . . . are like skilled actors. However, if these interpersonal abilities are not balanced by an astute sense of one's own needs and feelings . . . they can lead to . . . a popularity won at the cost of one's true satisfaction.")

44. Notwithstanding his expertise on the subject, see DANIEL GOLEMAN, *THE MEDITATIVE MIND* (1977), Goleman does not discuss meditation in *EMOTIONAL INTELLIGENCE*. See GOLEMAN, *supra* note 15, at 349 ("meditation" not listed in index).

45. See Daniel Goleman, *Psychology, Reality, and Consciousness*, in PATHS, *supra* note 18, at 18, 20.

46. Goleman notes that psychotherapy can be used to increase self-awareness, see GOLEMAN, *supra* note 15, at 54 ("Self-awareness is fundamental to psychological insight; this is the faculty that much of psychotherapy means to strengthen."), treat depression, *id.* at 70, speed post-operative healing, *id.* at 180, and treat obsessive-compulsive behavior, *id.* at 225.

so that the patient can see things differently.⁴⁸ The power of cognitive therapy stems from techniques such as reframing which attach new meaning to life events.⁴⁹

Such approaches develop a state of mind very different from that produced by mindfulness meditation. For example, Goleman's discussion of self-motivation draws upon separate research conducted by psychologists Martin Seligman and Mihaly Csikszentmihalyi.⁵⁰ Seligman describes the optimistic thinking patterns that lead to success,⁵¹ whereas Csikszentmihalyi describes how people enter into flow, the mental state that supports great achievement.⁵² Such states of mind do not involve the careful uncovering of thoughts and perceptions that characterizes mindfulness meditation. Optimism depends on a distinctive explanatory style⁵³ that often distorts truth,⁵⁴ not an investigation into reality. Flow is a state of absorption that resembles concentrative meditation⁵⁵ more than

47. See, e.g., *id.* at 72 (noting the usefulness of cognitive therapy in treating depression).

48. For example, research indicates that a critical component in successful psychotherapy is the patient's ability to focus on inner states. Such focus begins with clearing a space, but then moves into a dialogue with one's felt sense. See EUGENE GENDLIN, *FOCUSING* 51-62 (1988). See also RON KURTZ, *BODY-CENTERED PSYCHOTHERAPY* 72-73 (1990) (describing a psychotherapy in which one establishes mindfulness as a basis for evoking experience); GAY HENDRICKS & KATHLYN HENDRICKS, *AT THE SPEED OF LIFE* 103-04 (1994) (describing nonjudgmental attention as the starting point for therapy).

49. See GOLEMAN, *supra* note 15, at 74 (describing reframing as one of the most potent antidotes to depression); CONNIRAE ANDREAS & STEVE ANDREAS, *HEART OF THE MIND* 72-84 (1989) (describing a reframing technique).

50. See GOLEMAN, *supra* note 15, at 87-93.

51. See MARTIN E.P. SELIGMAN, *LEARNED OPTIMISM* (1990).

52. See MIHALY CSIKSZENTMIHALYI, *FLOW* (1990).

53. Optimists attribute bad events to temporary, specific, and external causes, and good events to permanent, universal, and internal causes. See SELIGMAN, *supra* note at 44-50. Traditional meditation does not foster these optimistic thinking patterns. See Clark Freshman, et al., *Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Specific Support*, 7 HARV. NEGOT. L. REV. 67, 80 n.59-60 (2002) ("[I]t is important to pay more attention than traditional meditation instructors often do to *positive emotions*. Too often, meditation instructions focus on opening up awareness to pain and unpleasant emotions. After all, much of the strongest empirical support shows positive emotions related to better negotiation results.") (emphasis in original, footnotes omitted).

54. Pessimists, "though sadder, are wiser." *Id.* at 109. Studies show that they judge more accurately their control in situations, as well as their level of skill. See *id.*

55. See CSIKSZENTMIHALYI, *supra* note 52, at 53. Csikszentmihalyi notes that in a state of flow, a "person's attention is completely absorbed by the activity. There is no excess psychic energy left over to process any information but what the activity offers. All the attention is concentrated on the relevant stimuli." *Id.*

mindfulness.⁵⁶ Indeed, Csikszentmihalyi speculates that Hindu yoga is a system for maintaining flow.⁵⁷

Tony Schwartz's experience with tennis illustrates nicely why optimism and concentration are more effective than mindfulness alone. Schwartz began his tennis training with Tim Gallwey, who used nonjudgmental awareness to eliminate the critical thinking that sabotages success.⁵⁸ Finding Gallwey's insights initially powerful but ultimately insufficient,⁵⁹ Schwartz turned to sport psychologist James Loehr for a more powerful approach. Loehr did more than cultivate nonjudgmental awareness. Like Seligman, he offered techniques for generating positive states of mind.⁶⁰

In short, Loehr recognized that peak performance is more like acting than meditation.⁶¹ His approach to tennis illustrates this recognition. Loehr studied videotapes of top players and discovered that what distinguished them was how they recovered between points.⁶² He delineated four separate stages of recovery: (1) positive physical response, a confident stride, (2) relaxation, an almost complete absence of thought, (3) preparation, the iteration of a brief verbal bullet, and (4) visualization of the play to come.⁶³ Loehr concluded that peak performance requires "a delicate balance between disciplined movements and flexibility, willful effort and letting go, conscious

56. Thus, flow has results very different from those of mindfulness meditation. Whereas meditation dissolves the self, see SCHWARTZ, *supra* note 20, at 307 (noting that vipassana dismantles the illusion of a permanent self), flow strengthens the self, see CSIKSZENTMIHALYI, *supra* note 52, at 41 ("Following a flow experience, the organization of self is more *complex* than it had been before. It is by becoming more complex that the self might be said to grow.") (emphasis in original); *id.* at 42 ("Flow . . . builds the self-confidence that allows us to develop skills and make significant contributions to humankind.").

57. See CSIKSZENTMIHALYI, *supra* note 52, at 105 ("The similarities between Yoga and flow are extremely strong; in fact, it makes sense to think of Yoga as a very thoroughly planned flow activity.").

58. See SCHWARTZ, *supra* note 20, at 238; W. TIMOTHY GALLWEY, *THE INNER GAME OF TENNIS* 21, 96-97 (1979) (describing the use of nonjudgmental awareness).

59. See SCHWARTZ, *supra* note 20, at 242.

60. See *id.* at 250.

61. See *id.* at 255-56 ("The mark of a great actor is the capacity to bring to life whatever emotions the script calls for. . . . In sports, the script doesn't change so much: the athlete must always bring to life powerful *positive* emotions, regardless of what he may actually be feeling. In a way, I serve as an acting coach.") (quoting Loehr) (emphasis in original).

62. See *id.* at 254.

63. See *id.* at 255-56.

thinking and instinctive execution.”⁶⁴ Formal meditation plays only a small role.⁶⁵

III. MEDITATION AS SPIRITUAL PATH

Throughout his article, Riskin minimizes the role that religion plays in meditation. He gives little weight to the religious intention that supports the practice,⁶⁶ and says that the accompanying teachings are “as much a philosophy or a psychology as a religion.”⁶⁷ Riskin’s position is ecumenical. It does not distinguish mindfulness from other practices⁶⁸ and finds meditation consistent with values dear to the legal profession.⁶⁹

Riskin’s position, however, runs contrary to traditional understandings. Meditation “is and has always been”⁷⁰ a spiritual path. As such, it offers a potentially powerful solution to the problems that plague the profession.

A. *The Importance of Religious Intention*

This religious dimension of meditation surfaces in the underlying intention. Meditation teachers consistently regard intention as crucial. Its importance is perhaps most obvious in the Christian practice

64. *Id.* at 257.

65. Loehr’s book for corporate executives emphasizes the importance of alternating stress and recovery, as well as the cultivation of performer skills. It discusses meditation only briefly. See JAMES E. LOEHR, *STRESS FOR SUCCESS* 129-30 (1997).

66. Riskin mentions intention only briefly in a footnote. See Riskin, *Contemplative Lawyer*, *supra* note 11, at 30, n.129 (“The effect [of meditation] can depend on the intention one brings to the practice. . . . But the mediator’s ostensible motivation does not necessarily determine the effect of the practice.”).

67. *Id.* at 32 (“The teachings on which mindfulness is based are as much a philosophy or a psychology as a religion.”).

68. See Riskin, *Contemplative Lawyer*, *supra* note 11, at 33-34 (“[M]indfulness meditation resonates with spiritual practices from many religions and has attracted countless people from a variety of backgrounds. Monotheistic religions include traditional practices that resemble aspects of mindfulness meditation. And practitioners of a variety of religions have explicitly adopted mindfulness meditations that derive from the teachings of the Buddha. In addition . . . the practice has found employment in many secular settings.”) (footnotes omitted); *id.* at 33, n.136 (“[O]ther contemplative practices may produce some of the same or similar outcomes to those produced by mindfulness practice . . . And so may psychotherapy.”); *id.* at 65 (conceding that some “might prefer more recreation, psychotherapy or counseling, other contemplative practices, prayer, or Prozac.”).

69. See *id.* at 57-59.

70. WILBER, *supra* note 1.

of centering prayer.⁷¹ Taught in four simple steps,⁷² centering prayer is fundamentally an exercise in faith, a practice of resting in God.⁷³ This intention⁷⁴ provides the reason for engaging in the practice⁷⁵ and distinguishes centering prayer from similar techniques.⁷⁶ The importance of intention is also evident in tantric meditation, where the goal is to develop bodhichitta, the wish to attain enlightenment in order to benefit others.⁷⁷

Intention plays a less obvious but no less important role in mindfulness meditation. Although teachers of insight meditation often dispense with many religious trappings,⁷⁸ they still usually adhere to the Buddha's four noble truths: that life is suffering, that the cause of suffering is desire, that suffering ends with desire, and that the way to end suffering is through the eightfold path.⁷⁹ Although these truths do not require a faith in God or in love, they supply an overriding intention.⁸⁰ The meditation session itself provides an occasion for

71. See THOMAS KEATING, *OPEN MIND, OPEN HEART* (1992). This practice is drawn from fourteenth century *Cloud of Unknowing*. See *THE CLOUD OF UNKNOWING AND OTHER WORKS* (Clifton Wolters trans. 1978).

72. 1. Choose a sacred word as the symbol of your intention to consent to God's presence and action within. 2. Sitting comfortably and with eyes closed, settle briefly, and silently introduce the sacred word as the symbol of your consent to God's presence and action within. 3. When you become aware of thoughts, return ever-so-gently to the sacred word. 4. At the end of the prayer period, remain in silence with eyes closed for a couple of minutes. KEATING, *supra* note 71, at 139.

73. See KEATING, *supra* note 71, at 37 ("[W]hat we are concerned with is the faith relationship. This relationship is expressed by taking the time to open oneself to God every day. . . . The fundamental disposition in centering prayer is opening to God.")

74. See *id.* at 69 ("It is intentionality that distinguishes Centering Prayer from other forms of prayer.")

75. See THOMAS KEATING, *INTIMACY WITH GOD* 57 (1996) ("Centering Prayer is not a concentrative practice, nor an exercise of *attention*. It is an exercise of *intention*." (emphasis in original)).

76. See BENSON, *supra* note 3 (describing transcendental meditation) and *infra* note 85 (describing Relaxation Response).

77. See LAMA YESHE, *INTRODUCTION TO TANTRA* 54-55 (2001) ("Although it is true that bodhichitta is the most important prerequisite for tantric practice, in fact it is more accurate to say that the opposite is true: that the purpose for practicing tantra is to enhance the scope of one's bodhichitta. . . . In fact, all tantric meditations without exception are for the sole purpose of developing strong bodhichitta.")

78. See, e.g., SCHWARTZ, *supra* note 20, at 306 ("The form of Buddhism that Kornfield and Goldstein brought back to America was remarkably free of dogma, doctrine, rituals, ceremonies, hierarchies, and any requirement to pledge allegiance to any higher authority. 'There was no incense, no chanting, no God, no guru,' explains Eric Lerner, one of the founders of IMS. 'Instead, it was about sitting and closing your eyes and figuring out the truth for your self.'")

79. See GOLDSTEIN, *supra* note 5, at 85-91.

80. This intention pervades the practice, see SCHWARTZ *supra* note 20, at 307 ("The premise of vipassana practice, and of Buddhism more generally, is that all phenomena—including life itself—are ultimately transitory and impermanent. Through

experiencing the four noble truths,⁸¹ and the instructions for meditation stress the importance of “right understanding,”⁸² particularly, the recognition that our lives are “impermanent and fleeting.”⁸³

Perhaps the best evidence of the importance of religious intention to meditation comes from Harvard Professor Herbert Benson. In 1975, Benson proposed a simple method for evoking physiological relaxation. This method required a quiet environment, a mental device (such a word or object), a passive attitude and a comfortable position.⁸⁴ Designed for persons lacking religious beliefs,⁸⁵ this technique reduced blood pressure and drug abuse.⁸⁶

Nine years later, Benson announced that this technique became more powerful when coupled with a religious intention, something he called the “Faith Factor.”⁸⁷ Providing a motive for engaging in the

the practice of vipassana, one begins to dismantle the illusion of a fixed and permanent self”); and inspires commitment, *see* JON KABAT-ZINN, *WHEREVER YOU GO, THERE YOU ARE* (1994) (“It is virtually impossible, and senseless anyway, to commit yourself to a daily meditation practice without some view of why you are doing it, what its value might be in your life, a sense of why this might be *your* way and not just another tilting at imaginary windmills. In traditional societies, this vision was supplied by the culture. If you were a Buddhist, you might practice because the whole culture valued meditation as *the* path to clarity, compassion, and Buddhahood, a path of wisdom leading to the eradication of suffering.”) (emphasis in original).

81. *See* GOLDSTEIN, *supra* note 5, at 91 (describing the path as “To be mindful. Not clinging. Not condemning. Not identifying with things as being I or self. Moment to moment freeing the mind from defilements.”); *id.* at 142-43 (describing mindfulness of the four noble truths as one of the foundations of mindfulness practice); *id.* at 143 (“With this experience of impermanence comes a deep intuitive understanding that there is nothing in the mind-body process which is going to give lasting happiness.”).

82. *See* GOLDSTEIN & KORNFELD, *supra* note 5, at 2 (noting that the experience of awakening is “the very heart and essence of vipassana, or insight meditation” and that the path of awakening begins with “right understanding”); GOLDSTEIN, *supra* note 5, at 8 (“The first step [in the path] is right understanding”).

83. *See* GOLDSTEIN & KORNFELD, *supra* note 5, at 3; GOLDSTEIN *supra* note 5, at 9 (noting that “right understanding” involves knowing that “[a]ll phenomena are in constant flux. There is no lasting security to be had in this flow of impermanence.”).

84. *See* BENSON, *supra* note 3, at 159-61.

85. *See id.* at 175-76 (“The Relaxation Response is a universal human capacity, and even though it has been evoked in the religions of both East and West for most of recorded history, you don’t have to engage in any rites or esoteric practices to bring it forth. The experience of the Relaxation Response has faded from our everyday life with the waning of religious practices and beliefs, but we can easily reclaim its benefits.”).

86. *See id.* at 177 (describing benefits of the Relaxation Response).

87. HERBERT BENSON, *BEYOND THE RELAXATION RESPONSE* 5 (1984) (“I’ve come to understand that the effects of [the relaxation technique], *combined with the person’s deepest beliefs*, can create other internal environments that can help the individual reach enhanced states of health and well-being. The combination of a Relaxation-

practice, this factor encourages persistence and induces a placebo effect,⁸⁸ which helps heal most illnesses.⁸⁹ Indeed, his later book suggests that faith is built into mediation. The passive attitude required during the session⁹⁰ balances a powerful desire against a willingness to give up control,⁹¹ a common theme⁹² in many religions.⁹³

The religious intention that sustains meditation may take many forms. It need not derive from organized religion, or affirm the existence of God. It must, however, be a powerful vision that animates one's life.⁹⁴ It is the ultimate reframe,⁹⁵ which gives our lives deep

Response technique with the individual's belief system is what I call the 'Faith Factor.'" (emphasis in original). See also JOAN BORYSENKO, MINDING THE BODY, MENDING THE MIND 111-35 (1988) (describing use of beliefs at the Harvard mind/body clinic).

88. See BENSON, *supra* note 87, at 146 (noting that the Faith Factor "can provide at least two benefits not available through ordinary relaxation or meditation techniques: (1) It can encourage a person to be more persistent in following a regular Relaxation-Response program; and (2) it can combine the benefits of the Relaxation Response with those of a placebo effect.").

89. See *id.* at 82 (estimating that personal beliefs can play a major role in healing 75% of physical illnesses).

90. See BENSON, *supra* note 3, at 160 (noting that the "passive attitude is perhaps the most important element in eliciting the Relaxation Response.").

91. See BENSON, *supra* note 87, at 132 ("[T]here is a fine line between the health-promoting desire to get well and the stressful anxiety that can overtake that desire for health. The Faith Factor can help you maintain the balance that can lead to improved health.").

92. For statements of these themes in Christianity and Buddhism, see, e.g., JOHN BARTLETT, FAMILIAR QUOTATIONS 823 (1980) ("God, give us grace to accept with serenity the things that cannot be changed, courage to change the things which should be changed, and the wisdom to distinguish the one from the other.") (quoting Reinhold Niebuhr); ALAN W. WATTS, THE WAY OF ZEN 70 (1957) (describing a practical problem in Buddhism: "If my grasping of life involves me in a vicious circle, how am I to learn not to grasp? How can I try to let go, when trying is precisely not letting go?").

93. Jon Kabat-Zinn similarly recognizes the importance of intention in mindfulness meditation. His first book acknowledged the importance of attitude during the session. See KABAT-ZINN, *supra* note 6, at 31 ("The attitude with which you undertake the practice of paying attention and being in the present is critical."). His follow-up book emphasized the importance of intentionality in sustaining the practice. "Our vision has to do with our values and with our personal blueprint for what is important. It has to do with first principles. This is the level of intentionality which is required to keep your meditation practice vital." KABAT-ZINN, *supra* note 80, at 78-79.

94. See BENSON, *supra* note 87, at 6 (describing the faith factor as "a deeply held set of philosophical or religious convictions"); KABAT-ZINN, *supra* note 80, at 75-76 ("If you hope to bring meditation in to your life in any kind of long-term, committed way, you will need a vision that is truly your own—one that is deep and tenacious and that lies close to the core of who you believe yourself to be, what you value in your life, and where you see yourself going.").

95. See *supra* text accompanying note 49.

meaning. This vision aims at something beyond emotional health⁹⁶ and self-improvement.⁹⁷ Even Martin Seligman⁹⁸ and James Loehr⁹⁹ acknowledge that life is about something more than performance.

B. *Religious Practice and the Legal Profession*

This claim to ultimate meaning makes meditation potentially controversial. Meditation techniques are not necessarily parallel paths leading to one goal. They may well reflect different visions of “the good life.” Furthermore, meditation is potentially subversive of existing legal practice. A religious perspective does more than supplement existing mindsets; it supplants them entirely. By its nature, a claim to ultimate meaning trumps partial visions. Depending on its content, a religious perspective could undermine the adversary system,¹⁰⁰ and with it, the Lawyer’s Standard Philosophical Map.¹⁰¹

96. See Engler, *supra* note 21, at 121 (describing vipassana meditation as designed to “reach a more ultimate view of the self and reality” than that achieved in psychotherapy).

97. See KABAT-ZINN, *WHEREVER YOU GO*, *supra* note 80, at 75 (“[I]n the Western cultural mainstream, you will find precious little support for choosing such a personal path of discipline and constancy, especially such an unusual one involving effort but non-doing, energy but no tangible ‘product.’ What is more, any superficial or romantic notions we might harbor of becoming a better person . . . don’t endure for long when we face the turbulence of our lives.”). See also Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOT. L. REV. 109, 122 text accompanying note 54 (2002) (“While mindfulness meditation may provide [stress reduction, improved listening and negotiation skills] and possibly other pragmatic benefits, it also offers something more: the chance to cultivate self realization through serving clients and practicing the law. The deeper appeal of mindfulness to lawyers is its potential to connect the day-to-day work of lawyering with insights that provide lasting meaning into perennial questions about human existence.”) (footnotes omitted).

98. See SCHWARTZ, *supra* note 20, at 266 (“It may even be that optimism and a deeper level of wisdom are antagonistic. Given a choice, I myself choose wisdom.”) (quoting Seligman).

99. See *id.* at 267 (“In the end, the truth is the one thing that frees you and gives you comfort If you constantly try to defend against it in order to avoid pain, you’ll find yourself walking around with a smile on the outside, and a fanatical sense of emptiness on the inside. It’s only when you embrace the truth—including the pain—that the real healing begins.”) (quoting Loehr).

100. Depending on how they are interpreted, precepts such as “God is Love” and “Life is Suffering” may be inconsistent with a legal system in which adversaries fight over material goods. See also Scott R. Peppet, *Can Saints Negotiate? A Brief Introduction to the Problems of Perfect Ethics in Bargaining*, 7 HARV. NEGOT. L. REV. 83, 90 text accompanying note 25-27 (2002) (“Although Riskin suggests that mindfulness practice will better equip negotiators to apply either problem-solving or more adversarial strategies ‘moment-to-moment,’ a more likely effect of mindfulness, I think, is that mindful negotiators will abandon a truly competitive approach to negotiation. It will no longer be morally responsible to, as Riskin describes it, ‘mislead the other

At the same time, however, the claim to ultimate meaning makes religion a potentially powerful cure for lawyer dissatisfaction. If lawyers confront a "crisis of meaning,"¹⁰² religion offers a solution. The question remains, which vision speaks most effectively to practicing lawyers.

The chief advantage of mindfulness meditation, and Buddhism generally, is that it requires few metaphysical assumptions, making it attractive to skeptics. The disadvantage is that Buddhism is largely monastic. Buddhists take refuge in (1) the Buddha, a contemplative who achieved enlightenment while sitting under a tree, (2) the Dharma ("teaching"), particularly, the four noble truths, and (3) the Sangha, typically a community of monks.¹⁰³ How this vision applies to the laity, and lawyers in particular, is unclear.¹⁰⁴ The most obvious inference is that lawyers should quit their clients and retire from the world.

In contrast, Western religions speak more to society at large. The role models in those religions—Moses, Jesus and Mohammed—led social movements and sought justice.¹⁰⁵ Western teachings generally affirm the goodness of the material world¹⁰⁶ and the importance of human relationships.¹⁰⁷ Finally, Western religions address laity more than monks. Accordingly, those religions more readily generate a role for lawyers.

side,' or perhaps even to ascribe to the basic tenets of what Riskin calls the 'lawyer's standard philosophical map.'") (footnotes omitted).

101. According to Riskin, this map assumes that the disputants are adversaries and that their disputes will be resolved by a third party applying a rule of law. Accordingly, the lawyer adopts a duty of zealous representation, and regards the situation atomistically, without regard to its overall social effect. Furthermore, lawyers measure victory in terms of money, and pigeonhole people into legal categories. See Leonard J. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 44 (1982).

102. Riskin, *Contemplative Lawyer*, *supra* note 11, at 12 (quoting Joseph Allegretti).

103. See CONZE, *supra* note 9, at 27-28, 45-52 (describing the three objects of Buddhist faith).

104. Cf. SCHWARTZ, *supra* note 20, at 329 (noting that the idea of impermanence may not be palatable in our culture) (describing Goldstein's views).

105. See generally HUSTON SMITH, *THE RELIGIONS OF MAN* 375 (1986) (describing how the Jewish prophets spoke out against injustice).

106. The Western religions affirm that God deliberately created the world, which is therefore good. See *id.* at 316 (In Islam, the world "being the handiwork of a God who is both great and good, . . . must likewise be basically good"); *id.* at 356 (noting that Judaic prophetic denunciation of wealth inequalities presumes that material possessions are good).

107. See SMITH, *supra* note 105, at 432-33 (describing doctrine of Christian love); *id.* at 352 (describing Jewish conception of God as righteous and loving); *id.* at 329 (quoting Mohammed as saying, "Know ye that every Muslim is a brother to every other Muslim, and that ye are now one brotherhood").

Interestingly, Western religions generally adopt different contemplative practices than those found in the East. Western religions rely more heavily on vocal prayer¹⁰⁸ and visualization,¹⁰⁹ practices that speak more directly to those who still live in the world.¹¹⁰ Verbal prayer utilizes the cognitive capacities that underlie emotional intelligence,¹¹¹ and visualization is a particularly powerful tool for personal transformation.¹¹²

Indeed, such practices may be a necessary preparation for those who ultimately do retire from the world. John Engler argues that “you have to be somebody before you can be nobody.”¹¹³ He claims that Buddhism presumes a normal ego and that vipassana cannot be successful for those lacking a sense of self.¹¹⁴ Likewise, in Hinduism, yogis often retire from the world after completing a career as a householder.¹¹⁵ American lawyers should be so lucky.

IV. CONCLUSION

It is obviously daring to discuss mental health and religious practices in legal education. Legal education usually confines itself to developing intellectual skills. Yet, even lawyers are human beings,

108. See *id.* at 322 (describing prayer as one of the five pillars of Islam); RICHARD J. FOSTER, *PRAYER* (1992) (describing twenty-one types of Christian prayer, of which only two utilize silence).

109. St. Ignatius relied heavily on conscious reflection and visualization. See *THE SPIRITUAL EXERCISES OF ST. IGNATIUS* (Anthony Mottola trans.1964); KEATING, *supra* note 71, at 22 (describing Ignatius’s influence).

110. Indeed, even Theravadin Buddhism uses vocalization to cultivate loving-kindness. See KORNFIELD, *supra* note 18, at 19-21 (describing technique in which one recites a set of phrases, such as “May I be happy” about oneself, then about one’s friends and family, and then finally to all persons, including one’s family); SCHWARTZ, *supra* note 20, at 328 (finding that this technique sometimes prompts “a very palpable, welcome emotional shift . . . I could literally feel my heart softening and my anger, anxiety, or even fear diminishing”).

111. See *supra* text accompanying note 49.

112. That is the conclusion of those who study brainwave activity during meditation. See SCHWARTZ, *supra* note 20, at 149 (“Visualization coupled with brainwave training . . . has led to physiologic change, emotional tranquilization and a degree of mental control seldom reached in meditation without long practice.”) (quoting Elmer Green of the Menninger Foundation); ANNA WISE, *THE HIGH PERFORMANCE MIND* 63-67 (1997) (suggesting the use of visualization to induce deep meditation).

113. Engler, *supra* note 21, at 118, 119.

114. See *id.*; KORNFIELD, *supra* note 18, at 246 (“At least half of the students at our annual three-month retreat find themselves unable to do traditional Insight Meditation because they encounter so much unresolved grief, fear, and wounding.”).

115. In India, one moves through four stages of life: student, householder, retirement, and the state of *sannyasin* (one who neither hates or loves anything). See SMITH, *supra* note 105, at 81-87.

and, as such, can benefit from both psychotherapy and meditation. It is vital, however, that they not confuse the two. Psychotherapy works within the world; meditation points beyond it.

