

The Mindful Lawyer: Why Contemporary Lawyers Are Practicing Meditation

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In October 2010, some 180 members of the exceptionally verbal legal profession stepped out of role at a conference on The Mindful Lawyer at the University of California's Berkeley Law School, sitting together in meditative silence.

The lawyers, judges, professors and law students from twenty-three states and two other countries had come to California for the first conference convened to explore the development of meditation as it has grown over the last decade in law schools and law practice. The meeting was sponsored by Berkeley Law, four other law schools and the Center for Contemplative Mind in Society. Some of the participants had led early efforts to explore the potential of meditation to deal with stress in their professional lives and to assess the possibility that it could make their work more effective and sustainable. Others were new to these ideas.

The large turnout reflected the substantial attention given to meditation in recent years. A growing body of scientific evidence suggests that meditation affects brain structure and function and that it improves concentration, empathy and listening skills—all important to the effective practice of law. Meditation no longer is seen exclusively in terms of the spiritual qualities attributed to it in the 1960s when beat poets and others made it popular in the United States. Many people are impressed by the Dalai Lama's equanimity, wisdom and courage in the face of Chinese domination of Tibet and his exile. Some lawyers who are worn down by contentious and anxiety-provoking practice are interested in exploring the techniques that seem to serve the Dalai Lama so well.

In this paper, I will describe the conference, trace the decade-long process by which meditation and law have come together and suggest some of the

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ways that cultivation of mindfulness in the education of lawyers can make them more effective and empathetic.

The Mindful Lawyer Conference at Berkeley Law, October, 2010

It was an unusual lawyers' conference. Participants came on time and remained at the conference until it was over. There was little of the frenetic, caffeine-driven energy that characterizes the typical professional conference. About two-thirds of the conferees came half a day early to participate in a mini-retreat in which senior meditation teacher Norman Fischer, former abbot of the San Francisco Zen Center and advisor to the Bay Area Working Group on Law and Meditation, offered instruction and guided meditation. The fact that so many of the participants arrived early to meditate in a room full of lawyers suggested the seriousness of their interest and their intention to cultivate a new skill and build a new community.

When the conference officially began on Friday evening, Dean Christopher Edley described in opening remarks my meditation and law seminar and other programs related to meditation in the law school. "The growth of meditation courses over the coming years holds enormous potential for the individual students who will benefit and the clients they will serve," he said. "Moreover, these courses will help us to think about how we make a life in the law even more rewarding than it has been in generations past and how we make the practice of law even more closely connected to the deepest aspirations and the greatest challenges that face our communities and individuals alike."¹

The warmth of his welcome anticipated the mood and intimacy of the conference. The planning committee had wondered whether an emotional tone of mutual support and exploration could be sustained among lawyers meeting in the relatively sterile and rigidly structured spaces of large law school classrooms. As it turned out, the conference was notable for camaraderie and respectful interaction. Attention was focused on presentations, meditation and discussion, with little distraction from cell phones and the Internet.

For more than a decade, I have promoted the idea that meditation is directly relevant to law. I believe that the event marked a turning point in this nascent field as professors and practitioners came together to share experiences, analyze conceptual questions, discuss future possibilities and spend time together in contemplative silence. The success of the conference was one of the factors which led Dean Edley to establish the Berkeley Initiative for Mindfulness in Law in the fall of 2011 to expand course offerings grounded in mindfulness, to explore the relevance of mindfulness to law practice and legal education, to make mindfulness a more substantial presence in the Berkeley Law community,

1. A video record of Dean Edley's speech and all plenary sessions as well as audio records of the breakout sessions are *available at* <http://www.mindfullawyerconference.org/>. Readers of this symposium who have no meditation experience might consider trying a brief guided meditation, which can be found at the website of the Center for Contemplative Mind in Society, <http://www.contemplativemind.org/>. The center's website law page also has a rich archive of reports and papers on the past decade of law and meditation initiatives.

and to continue the Berkeley Law role in supporting the development of law and mindfulness for judges, lawyers, and law professors.

A Path to Meditation

Meditation became part of my professional life as founding dean of the City University of New York Law School in the early 1980s. Facing a stressful work life, I spoke to my friend David Hood, who had been founding dean at the University of Hawaii Law School. An experienced meditator, he encouraged me to try meditation. It seemed unlikely to me that starting the day by sitting in meditative silence for twenty minutes was likely to help me manage tense relationships with university bureaucrats, intrusive politicians, stressed-out faculty and students anxious about committing their professional futures to a new, unaccredited institution with an untried curriculum. But I tried it and found that it worked. Tensions didn't disappear and I did not become instantly skillful at responding to all challenges. But meditation certainly helped move me in that direction and I continued the practice.

Later I explored the relevance and value of meditation in mainstream secular life while serving as president of the Nathan Cummings Foundation through the 1990s. The Center for Contemplative Mind in Society was established to pursue this work and I served as the board chair.² We launched a fellowship program to support university professors who were interested in bringing meditative practices into their teaching. Among the early fellows was Leonard Riskin, then a professor at the University of Missouri-Columbia School of Law, whose entrepreneurial energy and creative approach to mindfulness were widely recognized. He wrote the landmark paper in the *Harvard Negotiation Law Review* in the spring of 2002 that became the focus of a Harvard conference on law, mindfulness and alternative dispute resolution and the centerpiece of a symposium issue.³ In 1998, the center convened its first meditation retreat for faculty and students at Yale Law School.

In 2001, I moved from New York City to California and began a decade-long association with the Berkeley Law School. I launched an informal student group that met weekly for meditation and continues to meet. In addition, a group of lawyers, professors and judges in the Bay Area formed a Working Group on Law and Meditation that met monthly in my home. We invited Norman Fischer to meet with us to help us deepen the meditative insights that we were applying to our work in the law. In a document called *The Meditative*

2. I discuss my experience at the Nathan Cummings Foundation and at the CUNY Law School at some length in my book, *Making Waves and Riding the Currents: Activism and the Practice of Wisdom* (Berrett-Koehler Publ. 2008), chapters 5 and 7. I also discuss the ways in which a consistent and focused meditation practice can be a crucial element in the practice and cultivation of wisdom at 1-7, 257-59.
3. 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).

Perspective, the group described our meditation practice and enumerated the ways in which it proved helpful in our law work.⁴

All of us had well-established meditation practices that significantly affected the way we did our legal work. Meditation increased our ability to be fully present in the moment and to see things as they were, free of our own preconceptions. This enabled us to connect better with complex situations in a court room or to make an empathetic connection with all participants in a negotiation process so that solutions could be explored through richer understanding. Because we were able to listen more intensely to clients, we could establish trusting relationships more readily, increasing our ability to understand their true objectives. Heightened equanimity made it possible for us to make clear decisions with reduced levels of anger or anxiety. The stresses present in our lives as lawyers became more manageable when we saw them in a meditative perspective. Our work became more sustainable and enjoyable.

The belief that meditation could improve the effectiveness of lawyers and their job satisfaction led us to seek ways to share these practices. We began to co-sponsor, with the Spirit Rock Meditation Center in Marin County, an annual meditation retreat for lawyers. In these retreats we offer meditation instruction and meditate together, then take part in focused discussions on ways in which meditation can be helpful in our law work. We also have conducted workshops for lawyers and judges. The benefits enumerated by the Working Group in the *Meditative Perspective* document became a foundation of the Mindful Lawyer conference and a focus of discussion, critique and exploration.

Berkeley Law School Seminar on Effective and Sustainable Law Practice: The Meditative Perspective

In 2009, I suggested to Dean Edley that I offer a two-credit seminar on law and meditation. He gave his approval, on condition that at least ten students sign up. The first year it was offered, forty students applied and that level of interest has continued. Each year I have admitted a diverse group of twenty students to the seminar, including some committed to careers in public interest law and others who will join corporate law firms. Some have had meditation experience, others have not. There has been substantial diversity in race, ethnicity, gender and gender preference.

Now in the fourth iteration of the course, I continue to be inspired and moved by the commitment of the students, the depth of their meditative experience, and the impact they see on their work in the law school and its clinics. Even people for whom meditation is new, who come to the practice with a substantial degree of skepticism, frequently find that the meditative

4. Working Group on Meditation and Law, *The Meditative Perspective*, available at <http://www.law.berkeley.edu/12342.htm>.

practice gives them insights into themselves, the study of law and the careers they are working toward.⁵

The emotional tone of the seminar is striking. There is none of the usual competitiveness of the law school classroom. I have established a rule of confidentiality so that people feel more comfortable in talking about personal matters than they do in most classes—including hopes and doubts about their careers in law and the state of the job market, the problem of self-esteem and negative self judgments, the pain and successes in their lives and in law school, and concerns about the possibility of successful law careers in balance with other aspects of their lives. The meditative space gives them the opportunity to view these issues honestly and without paralyzing anxiety or hopelessness.

Last year, I made a day-long retreat a part of the semester schedule, replacing two weekly sessions. At that point the students had been practicing meditation daily for about six weeks, bringing mindfulness into their law studies through structured exercises that I had assigned, and writing about the impact mindfulness was having in their studies and their lives. The retreat was the first time they had an opportunity to spend substantial time, perhaps five hours, in meditative silence. It permitted many of them to explore inner space and their own minds in a way that they had never done before.

Late in the afternoon, we had an extraordinary discussion, focusing primarily on empathy. In previous classes, I had talked about empathy as an important professional skill, permitting lawyers, for example, to make deeper connections with clients, permitting them to feel the suffering many clients endure. Drawing on their summer and clinical experiences, students talked about the difficulties of connecting in a trusting and open manner with clients who may need to cross barriers of class, education and culture to connect with a professional. One student, who is committed to a career defending capital cases, talked about how the deepening empathy resulting from his meditation practice gave him an advantage in understanding clients often accused of committing inhuman, appalling crimes. The meditative perspective permitted him, he said, to make the difficult leap to understanding the experiences that led his clients to their dilemma. The clients, in turn, became more willing to share their lives and experiences with him.

Some students talked about the pain in their own lives, often making revelations rare in ordinary conversation but extraordinary in the controlled and constrained atmosphere of a legal classroom. I am persuaded that this level of communication was possible because of meditation and the distinctive environment that we had collectively built during our weeks together. It highlighted for me the importance of helping law students develop this skill that will help them become fully effective as lawyers and fully evolved human beings. As meditation opens these students to look deeply at themselves and accept who they are, it also creates the possibility that they will see others—

5. The course syllabus, which includes a list of the readings, a schedule of the class topics, and a summary of the learning objectives is *available at* <http://www.mindfullawyerconference.org/resources.htm#syllabi>.

including clients, judges and adversaries—with the same clarity and acceptance. This empathetic connection has revolutionary implications for the ways that the law can be practiced.

The final written exercise in the course calls on each student to draft a code of personal and professional responsibility. I invite them to draw on readings in the course and discussions in class, their own meditative insights and their past experience to set out principles that can guide them through their remaining law studies, their careers in law and creation of an identity as a responsible professional. I have now read sixty of these codes over three years and have been impressed by their thoughtfulness, realism and idealism. These students understand the need to lead a balanced life if they are to be successful as people and professionals, mixing a realistic understanding about the challenges of the law world and a heartening courage about their capacity to enter that world in a way that permits them to keep their deepest goals intact.

Their codes are impressively original. For example, one student set out this principle: “I will be fully integrated in my family.” Obviously, she was saying that successful lawyers often neglect spouses, children and friends. Noting that this principle is not part of ordinary thinking about professional ethics and identity, she explained its relevance to the relationship with clients: “I believe that having this richer relationship with my own family will also help inform my interactions with clients—[and], by not being one-dimensional myself, I will be more likely to see everything that’s swimming beneath the surface of the legal issues clients bring to my office.”

Conclusion

The Mindful Lawyer conference looked at the ways that lawyers and judges have brought a meditative perspective to their work, enhancing their empathy, effectiveness, and creativity. It has made them happier in their work and less stressed. Some conference programs explored the implications of making mindfulness more pervasive in the practice of law and in the education of new lawyers. In my experience in the classroom, I have found a sense of what that transformation might look like. Of course, my students will encounter law firms and court systems where the meditative perspective is almost wholly absent and they will have to deal with the challenges and difficulties of remaining mindful in hostile surroundings. Many of them understand those challenges and believe that they have found new resources to take them on effectively.

In their development, I see the possibility that more complete integration of mindfulness into law practice and legal education could have important consequences for the way in which law is practiced, legal institutions function and legal doctrine evolves. Such changes could help us collectively deal with the profound challenges of the 21st century. It is hard to see how we will meet those challenges successfully without moving legal institutions in the direction of mindfulness and empathy.