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National Conference of Bankruptcy Judges: Mindfulness: Why Is It on Everyone's Mind?

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Mindfulness: Why is it on Everyone's Mind?

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Mindfulness: Why is it on Everyone's Mind?

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Mindfulness, Compassion Fatigue, and the un-Intentional Infliction of Emotional Distress

BY SCOTT ROGERS



The practice of law is intellectually engaging and calls for a great deal of effort and capacity. The demands placed upon lawyers and that lawyers place upon themselves to excel and win, can be a source of great fulfillment and, when pressure mounts, can be overwhelming and depleting. For many lawyers, the intellectual rigors of practice, which involve reading, analyzing, deliberating, drafting, reviewing, strategizing, and arguing, make up much of the landscape of the law. It is, however, but a partial view. For the heart of legal practice often touches the heart of who we are as human beings in ways we may not always appreciate, owing to the relentless drive to do well, win, and help solve other people's problems.

Justice Oliver Wendell Holmes, Jr. reminds us that the life of the law is not logic, but experience—an insight that runs deeper than even he may have realized. As systemic concerns over lawyer health and well-being take center stage, we are all encouraged to take stock and, as needed, take action to attend to self-care and the quality of our emotional lives.

Compassion Fatigue

This month's column explores an area of increasing concern in the law known as compassion fatigue. If the term is new to you, compassion fatigue, also known as vicarious trauma and secondary traumatic stress, refers to the cumulative emotional, physical, and psychological toll of ongoing exposure to emotionally charged experiences. These can include the traumatic stories we hear and images we see, along with interactions with anxious, confused, sad, and angry clients and colleagues. Importantly, compassion fatigue is different from burnout, which is brought on by the intensity of workload stress. The stressful nature of our work, however, can exacerbate compassion fatigue, and burnout and compassion fatigue can co-exist. Fortunately, compassion fatigue is treatable. It is important to appreciate its telltale signs and to take action to ameliorate its impact on our well-being, productivity, and health.

Signs of Compassion Fatigue

- Feeling overwhelmed and depleted
- Becoming emotionally numb and

- detached
- Having difficulty sleeping, headaches, and weight loss
- Experiencing disturbing memories and images, while awake and when dreaming
- Inclined to anger, irritability and worry
- Withdrawing socially, at work and home
- Harboring feelings of self-doubt, guilt, and self-contempt
- Seeking escape through alcohol, drugs, work, sex, food and other objects of addiction.
- Loss of purpose and job satisfaction

Many of these symptoms may be experienced periodically and dissipate. However, if you experience them over time, and regularly work in a helping or healing capacity or in an emotionally charged environment, they may indicate compassion fatigue. The American Bar Association reports that lawyers are especially susceptible to compassion fatigue if they practice in areas like criminal, family or juvenile law, which can involve visiting accident scenes, viewing graphic evidence, listening to victims' stories, and dealing with reports of trauma and victimization. As caring human beings with shared experiences and the capacity to empathize with those who are suffering, it is important to be attentive to the emotional residue that we all can pick up from our work.

What You Can Do

One of the most agreed-upon treatments for compassion fatigue is self-care. While the importance of self-care is probably a familiar refrain, implementing it in our lives can be challenging owing to feelings of not having enough time, believing that it is a sign of weakness, or misconstruing what constitutes self-care. Turning your attention to one or more of its most commonly espoused forms—especially those you enjoy and may find to be waning—can be beneficial. These include:

- Exercise
- Sleep
- Relaxation
- Nutritious eating
- Therapy
- Mindfulness practice
- Social connection

Mindfulness meditation is included in most lists of self-care yet stands apart in a few notable ways. First, most forms of self-care are an explicit part of daily life, e.g., eating, sleeping, and exercise, and the challenge many grapple

with is finding balance, or getting enough of it. Meditation, however, is regarded by many as a "nice to have," and many conclude that they do not have time for it. At the same time, practicing mindfulness meditation is not only useful as an end in itself for well-being, but also helps to establish a steadier state from which to meaningfully engage in other forms of self-care.

Self-Awareness

You may have friends and family who share with you their concerns for your emotional well-being. Often, though, people are too busy to notice, or feel uncomfortable sharing their concerns. Greater self-awareness allows us to more readily notice when we are not quite ourselves, and to pause and check for signs of compassion fatigue. Doing so may sometimes result in an unexpected wake-up call. The initials of compassion fatigue are "cf," which is a grammatical device that means "compare with." It can be helpful at times to compare yourself today with yourself at a good period in your life. If that comparison suggests that you are not quite yourself—perhaps more irritable, prone to anger, experiencing headaches or having difficulty sleeping, feeling sad or exhausted, or self-medicating, it may be worthwhile talking with someone and exploring forms of self-care that resonate with you.

A New Cause for Action and Avenue for Relief

In many ways, our empathic and compassionate human capacities, coupled with our motivation to help others who are suffering, amid a stressful and combative landscape like the law, can lead to the unintentional infliction of our own emotional distress. It is a cause for action, and there are steps we can take to find relief and feel better so that we can do better for ourselves, our clients, our families and friends, and our profession.

One of the reasons mindfulness meditation has become so popular is that it helps to develop resilience. As discussed in previous columns, while mindfulness practices can be relaxing, an important aspect of their utility is developing the capacity to remain steady amid emotionally agitating moments. A key to this is not learning to grin and bear it, but rather perceiving with greater clarity what is actually taking place. And because mindfulness practices are often calming, their benefit as a form of self-care is compounded. You can visit <http://bit.ly/dcbabulletin> to read previous

columns appearing in the Bulletin and the Florida Bar News on mindfulness insights and a series of practices that you can bring into your busy day to help enrich the quality of your life. You may want to begin with articles that discuss (1) The Three Minute Breathing Space and (2) Mindful Listening.

Closing with a S.T.E.P. in the Direction of Mindfulness

As with sleep, exercise, social engagement, and eating, establishing a regular mindfulness practice is recommended to more fully and reliably experience its benefits. As we close this article, we can together take a S.T.E.P. in this direction with a short practice. It is one that you can do amid an emotionally challenging moment for a few breaths. The instruction is to:

- Stop
Take a Breath, Aware of the Breath
- Expand Awareness Around the Object
- Proceed

Even now you can practice. "Stop" or slow down the momentum of this moment by forming the intention to take a few moments and practice mindfulness; you are reminding yourself that you are here. "Take a Breath" and, as you inhale and exhale a little bit more deeply for a few breaths, bring awareness to the sensations of the breath flowing through your body. The key here is a pivot toward greater awareness. "Expand Awareness" beyond these words, or whatever has the lion's share of your attention in the moment, and take in the larger field. Listen for sounds, feel the temperature and movement of the air, notice aroma, observe whatever arises and passes through the visual field. This is shifting into a state of what has been termed "choiceless awareness" or "bare attention," as you practice being present for the moment, as it is. When you are ready to do so, "Proceed," carrying on with your day—perhaps bringing a little of what you cultivated through this short practice into the moments that follow. We might think of this as the Intentional Infliction of Emotional De-stress.

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What do we want? Mindfulness in Law!

By Scott L. Rogers

268 | December 2014 / January 2015

About a year ago, the comic strip *Bizarro* depicted a group of monks gathered at an assembly where their leader, megaphone in hand, shouted, and the throng replied:

"What do we want?"
"Mindfulness!"
"When do we want it?"
*"NOW!"*¹

The rapidly growing presence of mindfulness across the legal landscape — from Bar conventions and section meetings, to law firms and government agencies, to law school programs and course offerings — echoes the urgency of the *Bizarro* message. Indeed, if you've kept up with the influx of mindfulness training for lawyers and judges, as well as the publication of books, Bar Journals and law review articles discussing mindfulness,² you've likely marveled at the pace of change over the decade. More than 20 law schools, recognizing the crucial role they play in equipping future lawyers with a robust set of tools to navigate the challenging terrain of law practice and life, offer mindfulness courses and training to their students.³ At the same time, just as the humor embedded in Dan Piraro's image relies on paradox, so too the very idea of infusing into the law the practice of mindfulness — often regarded as a New-Age, touchy-feely subject associated with navel-gazing and spacing out — appears to many as an oxymoron.

In fact, mindfulness is a form of mental training that carries with it benefits in the areas of cognitive performance, emotional intelligence, and health and well-being — areas of great importance to lawyers and to those who look to lawyers for their wise counsel, reflective demeanor and problem-solving expertise. It is receiving widespread attention in the popular culture, largely owing to a compelling body of medical and neuroscientific research vouching for its efficacy. There is perhaps no more important time than today in the evolution of law and society — where distraction, distress and distrust are so prominent — for a tool that serves these important ends to be introduced to lawyers and other members of the legal profession.

What is Mindfulness?

Mindfulness is a practice of paying attention to present-moment experience in a manner that is engaged and unassuming. "Engaged" means attentive, interested and observant, and "unassuming" means being without judgment — open and receptive to what arises in the field of awareness.⁴ By intentionally paying attention, moment by moment, we cultivate a more direct and clear relationship to what is arising, and, to the extent we are able to remain connected to this experience, are more responsive to what a given situation requires. As attorneys, our being responsive to the continually changing and demanding landscape of our professional life is fundamentally important in order for us to excel at the work we do, and to do it, day in and day out, without losing our edge or being worn down.

Consider for a moment the importance of paying careful attention to colleagues, clients and adversaries, and the times when your mind is focusing on something else or misinterpreting what is being said. Consider also the benefit of being able to keep your cool amid emotionally charged encounters with difficult people and upon learning undesirable news. It's not so much that we can't navigate our way through these situations, as it is that we are not doing so as effectively as we can. And, there are times when, notwithstanding our clear intention to remain calm and collected, the situation simply overwhelms us.

The Science of Mindfulness

Over the course of the last decade, an exceptional body of medical and scientific research has been directed to studying mindfulness. Thanks to new technology allowing us to peer more deeply than ever into the activity, function and structure of the brain, there has been an accelerated growth in attention to, and volume of, mindfulness-focused research.

On the medical front, research has found mindfulness practices to be connected with decreased levels of the stress hormone cortisol, to lead to improved functioning of the immune system, and

to alleviate the suffering of chronic pain, help heal psoriasis and reduce cardiovascular disease and diabetes. Delving even deeper, recent findings report mindfulness to influence the "expression" of genes associated with inflammation and to slow the rate of cellular aging.

In the neuroscience realm, researchers have found mindfulness practices to be associated with a thickening of the regions of the brain associated with focus and concentration. They have also found that meditators have stronger connections between brain regions, show less age-related cortical thinning when compared to a control group, and reveal greater amounts of gyrification ("folding" of the cortex), which may allow the brain to process information faster.

In the mental health arena, along with being a helpful tool for working with anxiety and depression relapse, mindfulness has been found to be helpful in treating conditions such as obsessive-compulsive disorder, borderline personality disorder and addiction.

My colleague, Paul Singerman, experienced in bankruptcy law and who has taken a strong interest in mindfulness, tells audiences that while it may seem that mindfulness is "too good to be true," in his opinion, it just may be as good as it seems. But, anyone who takes an interest in mindfulness soon learns that practicing mindfulness is hard work!

The Practice of Mindfulness

The practice of mindfulness is easy to learn. It involves a subtle shift in the attention you bring to what you are doing, moment by moment. For example, while you have been reading this article, it is likely your mind became distracted by people, sounds or even your own thoughts. Mindfulness involves realizing that the mind is distracted and having the mental wherewithal to direct your attention back to the task at hand. In a moment, I'll share with you a mindfulness exercise that involves placing attention on the breath. But do not lose sight of the fact that at this moment you are placing your attention on these words, and doing so intentionally and with the capacity to notice when

your mind wanders and, if you choose, to return your attention to these words is . . . well, mindfulness.

You might wonder why this is important. After we practice the following mindfulness exercise, I'll share with you some of the reasons why it may be one of the most important things we do, personally and professionally. First, let's shift gears and move from thinking about these words to thinking about something else — the breath. We'll also try to move beyond thinking, to experiencing the breath in a more direct manner.

1. *Begin (with eyes open) by placing your attention on your breathing.*

2. *Think to yourself: "I am breathing in . . . I am breathing out," as you follow each of your next three breaths.*

3. *Now, more directly experience the breath by feeling the rising and falling of your belly with each of the next three breaths. It may be helpful to close your eyes.*

What did you notice? First, were you able to *think* about the in-breath and out-breath? This involved shifting your focus and speaks to the *faculty of attention*. You have the ability to place your attention where you choose, a skill not to be taken lightly. Next, were you able to shift from "thinking" about the breath to experiencing it more directly? This more immediate "knowing" likely became pronounced when you *shifted your attention* to feeling the breath moving through your body with the rising and falling of your belly. Lastly, how would you describe the experience? For many, the experience of placing attention on the breath for a few moments can be calming or relaxing. While this isn't always the case — and it isn't the primary objective of mindfulness practice — it is a nice benefit you likely will experience from time to time.

In a moment, we'll take our exploration of mindfulness to the next level and where the scientific community is focusing its attention.

But, first, lower or close your eyes and pay attention to your breathing for the next five breaths.

Mindfulness Exercise #1

1. *Begin (with eyes open) by placing your attention on your breathing.*

2. *Think to yourself: "I am breathing in . . . I am breathing out," as you follow each of your next three breaths.*

3. *Now, more directly experience the breath by feeling the rising and falling of your belly with each of the next three breaths. It may be helpful to close your eyes.*



Did you notice your mind wandering? If you're like most people, you did. Spoiler alert: If you continue to practice mindfulness, you will come to realize just how much your mind wanders. This can be a source of distress as you realize your mind has a mind of its own, so to speak. It also creates an invaluable opportunity to do something about it. Mindfulness is a *training* of the mind. Research points to the extraordinary capacity of the brain to be trained and to restructure itself in alignment with the training — a phenomenon known as neuroplasticity.

A recent Harvard study addressed both the mind's tendency to wander and its consequences, highlighting why it can be helpful to train your mind to wander less (or to be more aware of its wandering). Dan Gilbert and Matthew Killingsworth had subjects report, at random moments during the day, whether or not they were on task. For example, if they were working on a project but at the time they were prompted realized that their thoughts were elsewhere, they were off task. The researchers found that people's minds wandered about 47 percent of the time. It's like our minds are puppy dogs that are continually distracted.

A cautionary lesson is that we tend not to realize when our mind wanders; this can have implications for our pro-

ductivity, focus, organization, listening and decision-making. This alone is cause to take seriously the adverse effects of a distracted mind and consider a tool like mindfulness. A second finding that Gilbert and Killingsworth report — and one which claimed many headlines — was that when the mind was off task, people reported experiencing lower mood. Hence, "A Wandering Mind is an Unhappy One."⁵

What can we do about this? Let's return to the exercise and add an important instruction.

1. *Bring yourself into a posture that is upright and stable.*

2. *Lower your eyes (or close them if you prefer, after you learn the complete instruction).*

3. *Bring your attention to your breathing, following the in-breath, following the out-breath.*

4. *Rest your attention on the flow of the breath through your body, with the intention of keeping it there.*

5. *When you notice your mind wandering, bring your attention back to the breath.*

6. *Do this for a few moments, then lift your gaze or open your eyes.*

Do you notice what was added to the instruction? An important mindfulness insight is that it makes sense that the mind wanders, and there is nothing about mindfulness practice that tries to stop the mind from wandering, or clear the mind of thoughts. Mindfulness is oriented around allowing the moment to be *as it is* — thoughts, feelings, body sensations and all. Rather than resist or react unthinkingly to what may be unpleasant or unwanted, the practice is to recognize what is arising and bring attention back to the original object of attention — be it the legal case you are reading, the person you are listening to, or the breath. We practice with the breath in order to strengthen our ability to notice a wandering mind and become more expert at bringing it back.

While the mindfulness instruction may

seem simple, many find it to be extremely challenging — even frustratingly so. My colleague, cognitive neuroscientist Amishi Jha, compares the mental training of mindfulness with the physical training of lifting weights. It is hard work. Each repetition in the gym is akin to noting that the mind has wandered and bringing it back to the object. Just as physical exercises bring measurable benefits to muscle mass and strength, so too mindfulness is regarded as exercising the “muscle” of attention.⁶ Just as a competitive advantage comes to those who find the discipline to work out at the gym, so too the manifold fruits of mindfulness are realized by those who find the discipline to practice it.

Bringing Mindfulness into Your Workday

You can bring mindfulness practice into your workday in ways that are considered “formal” and “informal.” A formal mindful sitting practice entails sitting for a set period of time (say, five to 10 minutes) and following the above six-step instruction. It can be helpful to listen to a guided recording; many can be found on the Internet. On the website listed at the end of this article, you will find a series of one- to 20-minute guided mindfulness exercises that you can listen to or download.

Another formal practice I highly recommend, which might not seem so formal, is called “mindful walking.” Much like mindful sitting, you take your footstep as the object of your attention and, when you notice your mind wandering, you return attention to your footstep. This practice can be seamlessly embedded into a workday.

An informal practice you may find helpful is called the “But For Pause,” which involves taking a series of breaths — with awareness of the sensations of the breath flowing through your body and of the activity of your mind — when you detect that you are becoming agitated. In time, you’ll notice that *but for the pause* you may well have acted in a way that disserved your interests. There is nothing profound in these insights — what is profound is how you notice yourself

Mindfulness Exercise #2

1. Bring yourself into a posture that is upright and stable.

2. Lower your eyes (or close them if you prefer; after you learn the complete instruction).

3. Bring your attention to your breathing, following the in-breath, following the out-breath.

4. Rest your attention on the flow of the breath through your body, with the intention of keeping it there.

5. When you notice your mind wandering, bring your attention back to the breath.

6. Do this for a few moments, then lift your gaze or open your eyes.



gaining greater mastery over situations and personal exchanges that previously may have gotten the better of you.

The Big Picture

The rule of law evolved to bring order out of chaos and establish a vehicle for human beings to rise to the highest levels of intellectual achievement, commerce, social connection, and health and well-being. Today, the practice of law is regarded by many as having re-entered a state of nature where rules are subverted, civility is lost, and the bottom line has become the top priority. Mindfulness, like the rule of law, serves as a vehicle for establishing a more enduring stability. In many ways, it is refreshing to see the legal profession — charged and equipped to serve society, resolve conflict and establish a more stable order — looking to mindfulness as a tool to help serve this noble end.

Learning More

The webpage, www.mindfulnessinlaw.com/lbsa, provides information and resources you will find helpful for furthering your understanding and practice of mindfulness.

FOOTNOTES

1. Dan Piraro, Bizarro Blog, Aug. 23, 2013, available at: <http://bizarrocomics.com/2013/08/23/gimme-gimme/>.

2. Scott L. Rogers, “Mindfulness in Law,” *The Wiley-Blackwell Handbook of Mindfulness* (Amanda Le, Christelle Ngnoumen and Ellen Langer, eds., 2014).

3. The University of Miami School of Law established a Mindfulness in Law Program, www.mindfulness.law.miami.edu, and the University of California-Berkeley formed an Initiative on Mindfulness in Law, www.law.berkeley.edu/mindfulness.htm. Other law schools with mindfulness offerings can be found online: www.themindful-lawschool.com.

4. Scott L. Rogers, “Mindfulness Across the Curriculum: Infusing and Integrating Mindfulness into the Law School Classroom,” 36 U. Ark. Little Rock L. Rev. (forthcoming 2014).

5. Jason Castro, “A Wandering Mind is an Unhappy One,” *Scientific American*, Nov. 24, 2010; www.scientificamerican.com/article/a-wandering-mind-is-an-un/.

6. Amishi P. Jha, “Mindfulness Can Improve Your Attention and Health,” *Scientific American Mind*, March 1, 2013; www.scientificamerican.com/article/mindfulness-can-improve-your-attention-health/.

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March 24, 2020

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Mindfulness 101: Negotiations and a Return to the Balcony

By Scott L. Rogers

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Bob represents a client who is selling its business. Terese's client is interested in purchasing this business. Both enter the negotiation prepared. Still, given their clients' needs and concerns, and the uncertainty inherent in the negotiation process, there are periods that get intense, positions seem intractable, and things get personal. The balcony is made for moments such as these.

The *Mindfulness 101* column in the November 2019 issue of *GPSolo eReport*, "[Me-gotiations and Going to the Balcony](#)," addressed the interplay of mindfulness and negotiation. The column considered how negotiating with other people involves an internal negotiation in which emotions, beliefs, and physical sensations can generate inner conflict and influence decision making, often obscuring insight into why we act as we do. Bob's negotiation with himself, while preparing the night before, on whether to offer a 10 percent or 15 percent reduction in purchase price is challenging enough, let alone the challenge involved in negotiating in real time the next day with Terese. Amid intense negotiations, the metaphorical "going to the balcony" can be helpful as it involves imagining looking down on the problem and its participants, and allows one to be less attached and emotional and better able to see the bigger picture.

Formulated by William Ury in his book *Getting Past No: Negotiating in Difficult Situations* (Bantam, 1991), "going to the balcony" offers a compelling metaphor for being more effective in resolving disputes, and one that assists us in taking a deeper look at the role mindfulness can play in facilitating more fruitful negotiations. The scenarios below walk through the same inflexion point in Bob and Terese's negotiation, illuminating some of the potential benefits afforded by a regular mindfulness practice and of being more mindfully aware.

Negotiating Without a Trip to the Balcony

Bob gets nervous sensing that Terese is ready to walk from the deal. His client really wants to sell and is willing to offer a 20 percent discount. Bob decided prior to the negotiation to offer at most 10 percent. Now everything seems to be unraveling. He worries that he came out too confident and is anxious. He feels flush and wonders if Terese sees the beads of sweat accumulating on his forehead.

Absent a technique like going to the balcony, Bob's agitated state can be consequential. It is hard for him to think clearly, unfounded assumptions take hold, and he becomes emotionally overwhelmed. All can lead to a digging in, or an all-too-hasty compromise.

Bob digs in and sticks with 10 percent. It's the plan he went in with and he chooses to stay the course. He feels weak at the thought of giving in to Terese. It all happens so fast, and he hopes Terese was bluffing. She listens to him and to his dismay declines the offer and thanks him for his time. As she gets up to leave, she wishes his client well. She wasn't bluffing.

Accepting an Invitation to the Balcony

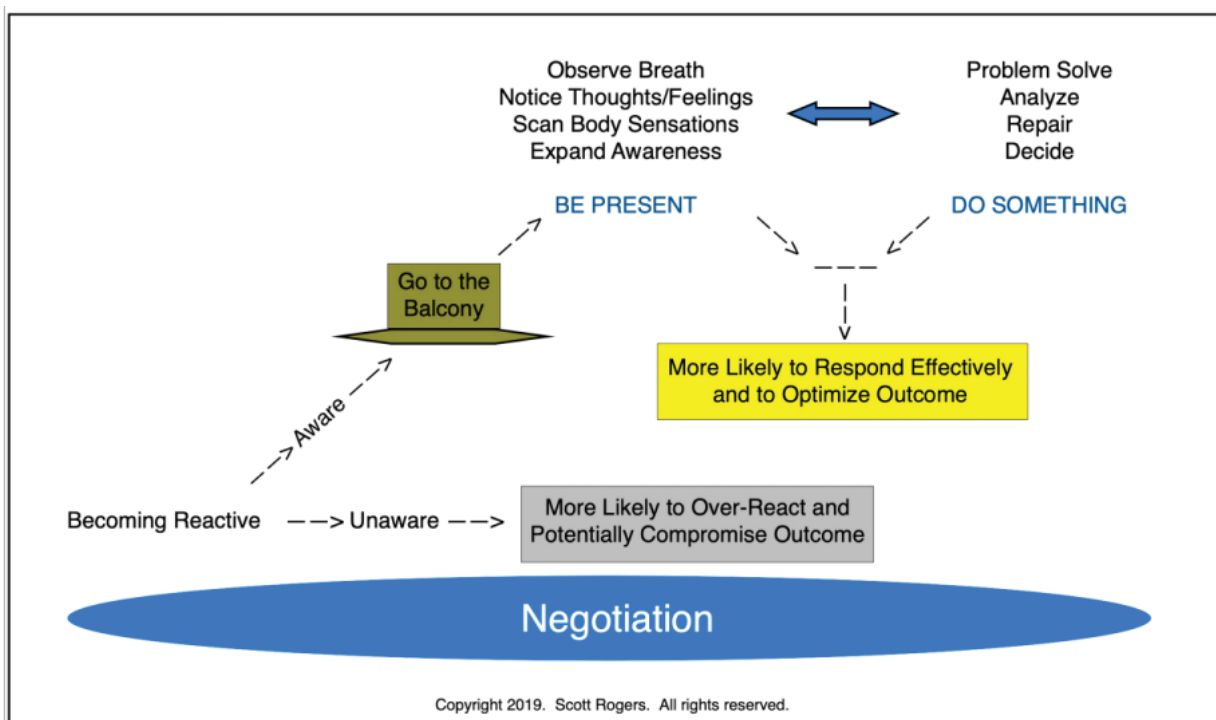
With a negotiation technique in hand, and perhaps some prior experience employing it, Bob responds differently. He isn't as quick to react, calms down, and engages in a more reflective process.

Realizing he is becoming frazzled, Bob makes a beeline for the balcony. Believing that the few minutes he needs to regroup will be difficult and awkward if he sits silently, he requests a short break to use the bathroom, and excuses himself. In the bathroom, he wipes his forehead and takes a series of slower, deeper breaths, which help him relax. A few moments later, he feels calmer. He makes the decision to go back and offer a 15 percent discount. Terese listens intently and soundly rejects the offer. The constellation of agitated thoughts, feelings, and body sensations kick into high gear and Bob again eyes the balcony.

While the metaphor is immensely useful, absent the skills developed through mindfulness practice, its utility is often reduced to the tactical maneuver of “stepping back,” “taking a deep breath,” or “pausing” so as to reenter the negotiation a little less agitated, a little more relaxed, and perhaps having more thoughtfully considered the issues. As evidenced above, such excursions to the balcony can be calming and clarifying, but they can also be short lived and accompanied by a recurring need (often ignored or too challenging to execute) to return to the balcony.

In contrast (though really as a complement), the benefits of mindfulness practice help cultivate a more enduring quality of awareness that, by its very nature, results in greater clarity and emotional resilience amid challenging moments, rather than providing a temporary respite and opportunity to regroup.

The challenge is that when mindfulness practice is seen as a relaxation technique, the balcony is viewed as a place to calm down so as to be able to take a step back, see the bigger picture, and come up with a better plan. This is useful and sometimes will save the day. But the mindfulness practice offers much more.



Going to the Balcony During Negotiations

Courtesy of Scott L. Rogers

As noted in the diagram reprinted above from the November column, the balcony is a place where both *doing* and *being* take place—problem solving, analyzing, taking action, as well as observing, noticing, attending. But what exactly does this mean in practice?

Going to the Balcony Mindfully

Let's assume that Bob has begun practicing mindfulness on a regular basis and see how his practice factors into his effectiveness as a negotiator, and what it means to *mindfully* go to the balcony.

The morning of the negotiation, Bob spends 15 minutes, as he does most mornings, practicing mindfulness. He alternates each day between two popular mindfulness practices known as Focused Attention and the Body Scan. Focused Attention has helped him develop his capacity to stay focused and notice mind wandering (among other benefits), and the Body Scan has helped him detect signs of physical discomfort, developing greater resilience amid uncomfortable moments.

Like preparing for a tennis match with endurance exercises, such ongoing mental exercise equips Bob to more naturally remain focused and steady in the midst of a challenging negotiation.

In the bathroom, Bob takes a few moments and rests his attention on his breath. He detects a whirlwind of thoughts, many pessimistic, and how they rattle him. Because he notices them, he is less likely to get caught in them and, owing to his ongoing practice, his attention steadies and a frantic mind begins to settle. He senses the tension in his chest and a sinking feeling in his stomach. These lead to more thoughts, but he remains focused on the body sensations and is not distracted. He knows that the body sensations will come and go, as this is his experience each morning. And he knows that while they are unpleasant, they are bearable. He considers doing a more engaged mindfulness practice known as RAIN but chooses not to, as he knows it wise to rejoin Terese in a few minutes.

As he washes his hands, Bob reflects on the fact that he has prepared well and is doing his best. Terese's client would likely do the deal with a 20 percent discount. He reminds himself that he considered a lot of factors in deciding on 10 percent. However, given his intuition that Terese may walk, he offers a 15 percent discount. Terese listens intently and soundly rejects the offer. Bob is disappointed and knows he has a decision to make. Given that his client would be happy with offering 20 percent and appreciating deep down that part of his resolve is to impress his client, he lets go of that need and asks Terese to help him understand why her client seeks more than 15 percent, which seems reasonable to him. Terese replies that 15 percent is a reasonable offer, but her client would not be able to guarantee payment unless another deal closes favorably. Bob suggests they enter into an agreement in which Terese's client accepts the 15 percent discount contingent on the favorable deal closing, or else his client will provide a 17 percent discount. Terese agrees.

When There's No Time to Climb the Stairs

It was useful for Bob to take a short break, draw on a short mindfulness practice to calm down, see things more clearly, and to come up with a plan, maintaining flexibility. There are times, however, when the heat is on and there is no opportunity for a break. Much as in a tennis match, there are moments when all one gets to do after losing a huge point is wipe the sweat from one's racquet and brow and approach the baseline.

Gathering that Terese is ready to walk, Bob senses that the deal is unraveling and feels anxious. He notes the rise in his heart rate and, in response, gently slows his breathing. Having steadied himself a little, he remains focused on what Terese is saying. He detects sweat beading on his forehead and observes the coolness against his skin. He follows his intuition and bumps the offer to 15 percent, after which Terese explains why her client can't accept. Together they fashion a contingent deal at a 15 percent discount and, should the contingency fall through, close with a 17 percent discount.

The Many Advantages of Mindfulness

The four scenarios above provide a glimpse into the evolving advantage practicing mindfulness can offer—from being so caught in the drama that useful techniques are overlooked, to meeting challenges as they surface in real time. The mindfulness invitation to

visit the balcony is not to escape from the action but to be comfortable (enough) in the midst of it. Having a regular mindfulness practice makes a difference and, as the fourth scenarios suggests, the larger opportunity is to naturally be more mindfully aware and responsive such that our preparation and expertise bring out the best we have to offer, without having to try so hard.

[Next Article >>>](#)

Authors



Scott L. Rogers

Scott L. Rogers is a nationally recognized leader in the area of mindfulness and law, as well as a teacher, researcher, and trainer. He is founder and director of the University of Miami School of Law's [Mindfulness in Law Program](#), and he co-founded and co-directs the University of Miami's [Mindfulness Research & Practice Initiative](#). Scott is the author of five books including the recently released *The Elements of Mindfulness*.

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May 26, 2020

7 MINUTES TO READ • 1500 WORDS

Mindfulness 101: The Paradox and Promise of Solitude at a Time of Social Distancing

By Scott L. Rogers

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In today's column we explore the subject of solitude and its importance to the quality of our well-being and life's work. The form of solitude that I will share departs from conventional thinking for there is little trace of it when curled up on a couch reading a good book or taking a walk outdoors, listening to a podcast. It's the kind of solitude you can experience in a house full of people, the kind that patiently follows you wherever you go. After providing some background and resources, clarifying the term, and explaining why it matters, I'll share with you what I refer to as "mindful solitude," which offers a broader perspective on ways to understand and practice mindfulness.

SR Page 1 • Enter your thoughts here

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THE MINDFUL LAWYER: WE ARE ALL IN THIS TOGETHER

📅 Oct 18, 2019 👤 By Scott Rogers ▶ Special to the News 📁 Columns



As mindfulness has become more richly infused into the fabric of the legal profession, a shift is taking place from a primary focus on the lawyer and members of the legal profession to the broader relational context to include clients and parties to a dispute. Such a shift raises interesting and important questions about the role of lawyers and of the profession itself, and may hold the promise for further enriching the effective resolution of disputes, taking into account both the utility and responsiveness of legal solutions and the wellbeing of participants to a dispute.

Two examples can be found here in Florida. Three years after the law firm Berger Singerman offered a mindfulness training program to its team members in 2013, it offered a follow up mindfulness training for the firm's team members and representatives of its clients. More recently, Paul Singerman has been invited to speak with lawyers and judges about the importance of client mental health and well-being and the role attorneys can play as part of their responsibility to offer comprehensive and competent legal representation. Mediator Patrick Russell, an attorney with Lydecker Diaz, has been integrating short mindfulness insights and practice moments in some of the mediations he conducts. He reports that the parties appreciate the periods for a structured pause and find the proceedings to be more focused and productive. Both Singerman and Russell have been practicing mindfulness for many years and explore these questions and share these practices from their own direct experience.

WE'RE ALL IN THIS TOGETHER

The August 2019 **"The Mindful Lawyer"** column addressed a paradox in which lawyers, charged with helping to shine the light of insight and awareness on legal matters to meaningfully resolve conflicts and help support a more orderly and less agitated society are finding themselves increasingly agitated and in search of greater stability, personally and professionally. Given the widening scope of the role of mindfulness and those with whom it may be shared, this column takes a quick look at some of the primary drivers of human behavior and their influence on the lawyer-client relationship. In doing so, it invites us to reflect on the role of mindfulness — and a host of other approaches to well-

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The Mindful Lawyer: We Are All In This Together – The Florida Bar

being and resilience — in helping the lawyer establish a steady foundation upon which to be of assistance to the client across a variety of domains in keeping with our role of counselor at law.

THE CLIENT

Clients become clients because they need our assistance, often amid circumstances of conflict and high emotion. A careful examination of the typical client under such circumstances reveals a pattern that can be helpful to reflect on: (1) they want something; (2) they are emotionally agitated; and (3) they are confused. While this is by no means the case with every client and cause, you likely need not look far to find a client and cause in which these conditions are met. Usually, clients want things like money, revenge, and justice. They may want to be heard, to have a role to play, to matter. And sometimes, they simply want an apology. Because they do not have what they want, and because pursuing it can be challenging, emotions run high and include anger, frustration, hopelessness, grief, loneliness, doubt, fear, and anxiety. And because clients rarely know all of the facts, rarely appreciate all perspectives, and rarely have access to the whole truth — or are unable to hear it, there is often confusion. Add to this confusion the ongoing state of wanting and emotional agitation, and the confusion grows, which in turn grows the agitation and the wanting. To find relief amid this intense and highly charged cycle, the client looks to you.

THE COUNSELOR AT LAW

Some of the stress and intensity of practicing law — inherently a helping profession — comes from the emotional contagion of helping clients who are suffering in some of the ways explored above. Along their wants is for you to solve their problems, fix their mess, and be there for them when they call. . . or email or text or show up at your office. Moreover, their wanting, emotional agitation, and confusion are not the result of their being a client, but of their being a human being. Lawyers too are human beings. And what do we want? We want to be helpful and to win, fix, and resolve. We want to be trusted to do our job. And when we run into high demand and conflict, we can become angry, frustrated, sad, and feel alone, afraid, doubtful, anxious — and fatigued. And, notwithstanding our keen intellect and good intentions, we can become confused and make decisions and act in ways that are not always as helpful as we intended at the time.

MINDFULNESS

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Some of the attributes of a mindful lawyer — which we all possess from time to time — is a subject matter expertise coupled with qualities such as wisdom, focus, effective communication, empathy, patience, compassion, resolve, resilience, and the wholehearted embrace of the client and its cause. We each have our own complementary set of attributes, and you can modify this list to represent those ideals you aspire to model and the tone you wish to set and maintain throughout client representation. Of course, as aspirations, we will time and again, fall short in meeting them. Some of the reasons for this include the stuff of our own lives, the intensity of the workload, and the personalities with whom we interact.

The practice of mindfulness — the many forms it can take and its relationship to emotional intelligence, self-compassion, and self-care — is the primary subject of “The Mindful Lawyer” column and of a growing number of articles published in local, state, and national bar journals. These articles offer lawyers additional tools and insights to help them see more clearly what is arising during challenging times — often momentary states of wanting, emotional agitation, and confusion — so as to more skillfully navigate this terrain, in terms of their personal well-being and professional excellence. As counselors at law, we are looked to by our clients for help when they are in the worst of states, and we are not immune from feeling their pain, and being drawn into their dramas. It can be helpful to reflect, from time to time, on the wanting, emotional agitation, and confusion that our clients may be experiencing, just as it can be helpful to shine that light of awareness onto ourselves. To be a lawyer is to manage not only the challenges of our own busy and stressful life, but also the added layer of complexity brought on by our clients in need.

Many professionals grapple with burnout, vicarious trauma, and compassion fatigue, and lawyers are no exception. Nor are our clients, who have their own professional and personal lives, which often are the foundation of their need for our help. And, like all helping professions, there are many ways we can be of service. As more lawyers appreciate the benefits of the study and practice of mindfulness, they will be increasingly likely to share them with others. To be self aware, empathic, and attuned to our client’s needs carries with it the heightened responsibility to be able to offer assistance across a larger domain of concern. How we do this is for each of us to decide for ourselves. That we examine this question may be more crucial now than ever, and attending to it wisely may be helpful not only to our clients, but ourselves. After all, we are all in this together.

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The Mindful Lawyer: We Are All In This Together – The Florida Bar

If you have a question about mindfulness and integrating it into the practice of law that you would like answered in this column, send it to **srogers@law.miami.edu**.

Scott Rogers, M.S., J.D., is a nationally recognized leader in the area of mindfulness in law and founded and directs the University of Miami School of Law's Mindfulness in Law Program where he teaches mindful ethics, mindful leadership, and mindfulness in law. He is the creator of Jurisight, one of the first CLE programs in the country to integrate mindfulness and neuroscience and conducts workshops and presentations on the role of mindfulness in legal education and across the legal profession. He is author of the recently released, "The Elements of Mindfulness."

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The Return on Investment from My Study and Practice of Mindfulness

by Paul Steven Singerman



I was on a gurney in the hospital having been prepared for a major surgery. The surgeon, whom I had met only briefly before the procedure, greeted me and told me that I should feel completely comfortable because she was 53 percent present and feeling ready to perform my surgery.

On another day, after nearly a year of pretrial motion practice and discovery in a “bet-the-company” case, my trial judge took the bench and announced that he was prepared to proceed with opening statements and the trial, and that he wished both sides to know that he had read 53 percent of our respective submissions and was prepared to proceed.

Thankfully, neither of the incidents described above occurred. But they could have. An often-cited Harvard University study from 2010 confirms that most of us are “off task,” i.e., not focused on what we are doing or supposed to be doing in the present moment about 46.7 percent of the time. This data is very impactful to me.

Perhaps one of the most valuable benefits from the study and practice of mindfulness that I have enjoyed is developing a greater awareness of when I am off task. I have found it immensely useful — and sometimes absolutely frightening — to be aware of when I am regretting the past or worrying about the future. Only with the enhanced awareness of when I am not in the present can I make an effort to return to the present — the only place I can make a difference and the place that contains all the data — free for the observation of it — that allows me to be more knowledgeable and powerful in advancing my mission. To be sure, while the mission may be my professional life and client service, it is equally as effective in my personal life and in my personal relationships. How many of our friends, family members, spouses, and partners wouldn’t appreciate our being more present and observant in our interactions and conversations with them.

For the “tough guy” and “tough gal” lawyers reading this who may reject the notion of studying and practicing mindfulness for fear that it is inconsistent with the “tough” image, try this: Many people, myself included, believe that knowledge is power. Knowledge is derived from data. I know that I am better at observing and collecting data when I am focused on the present. I believe that we lawyers can perform better in all of our endeavors — both personal and professional — if we collect and process data with a greater sense of awareness, and I

The Return on Investment from My Study and Practice of Mindfulness (continued)

believe that the study and practice of mindfulness allows me to do that. I would want my surgeon or the judge presiding over my client's bet-the-company case to be completely present and focused on my cause, getting 100 percent of the available data — not 53 percent.

For those who remain skeptical about the performance-enhancing benefits of the study and practice of mindfulness, take just a few minutes to investigate the number of Fortune 100 companies in multiple sectors, including Aetna and Nike, which offer mindfulness training. Various branches of the U.S. military offer mindfulness training as well. So, too, does the Seattle Seahawks; NFL players are rarely accused of being “soft.” These companies and organizations are not offering mindfulness training to be nice; they are doing it to enhance the performance of their employees, soldiers, and players. They are doing it to enhance the return they are making on their investment of financial or human resources in their respective organizations.

In my few years of studying and practicing mindfulness, I have averted innumerable problems in my personal and professional life by increasing my awareness of data in the form of my own personal thoughts and feelings in the moment, data regarding my counter-party(ies) in an interaction, and data regarding the environment in which I find myself.

The study and practice of mindfulness has changed my life profoundly and for the better. I am grateful to my friends, former federal district court Judge Alan Gold and Professor Scott Rogers, for introducing me to the study and practice of mindfulness and to other thinkers and writers on mindfulness.

If I have succeeded in piquing your interest — even a little — then please invest the time to read this extraordinary edition of The Florida Bar Journal. I promise the return on that investment will be high. Then keep reading and start your own mindfulness practice. It will take work, and it truly will enhance your personal and professional performance.

To be sure, I have a very long way to go. The study and practice of mindfulness has made it easier for me to be aware of that, too.

Paul Steven Singerman is a partner in the Miami office of Berger Singerman LLP.

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MINDFUL LISTENING

AN INTERVIEW WITH PAUL STEVEN SINGERMAN

As trusted advisors, lawyers are looked to for their expertise and guidance. A key component of the skill set necessary for effective lawyering is listening. Notwithstanding the importance of effective and efficient listening, it is rarely taught in law school. And, in practice, bad listening habits and practices are often modeled by senior lawyers. In a fast-paced, distracting (technology oppressed?), emotionally charged, and stressful profession, listening can be compromised. And because listening is largely an internal process, we may not even realize that we have become distracted, or otherwise that our listening has become impaired. Listening is regarded as so consequential to the smooth flow of commerce, relationships, and well-being that in recent months national periodicals such as the *New York Times*, *Forbes*, and the *Wall Street Journal* have written about and offered tips on effective listening.

Yet, even when one “knows” what to do to be a more effective listener, it can be challenging to do so in the middle of a heated conversation or when one is distracted. In many cases a prerequisite to “active,” “engaged,” and “effective” listening is a quality of self-awareness and resilience that allows one to remain present. As a growing number of lawyers are realizing, mindfulness practices can help to tone down some of the internal impediments to maintaining active and engaged listening.

We spoke with Paul Steven Singerman—who has been discussing “mindful listening” with lawyers, judges, and law students for almost a decade—to more fully flesh out how mindful listening can

play a meaningful role in the life of a lawyer. Paul is co-chair of Berger Singerman LLP and is nationally recognized for his work in large and complex restructuring, insolvency, distressed business mergers and acquisitions, troubled loan workouts, and bankruptcy-related litigation. Paul launched the firm’s first mindfulness program more than six years ago with the goal of providing colleagues with a space and opportunity to learn how to enhance their data-gathering skills through heightened self-awareness and to enhance their personal and professional performance and relationships. Paul frequently speaks and writes about mindfulness matters for lawyers and judges.

GPSolo: Thank you, Paul, for taking the time to explore mindful listening with the readers of *GPSolo*. You have been sharing mindfulness with lawyers and judges for many years and were one of the first to discuss the importance of mindful listening. Of all the subjects you could focus on, why listening?

Singerman: I’ve been zeroing in on mindful listening in my professional life for three principal reasons. The first is that I believe that lawyers, speaking very generally, are poor listeners. Second, I believe that lawyers are under a dreadful misapprehension that they appear to be smarter when they are talking instead

of listening. And third, I believe that the legal profession has championed the notion that early interruption means that the interrupting lawyer is really smart and has already seized the point that her or his counterparty is attempting to make. I am convinced that these are unfortunate notions and habits that are counter-productive to the goals lawyers wish to achieve and, secondarily, not good manners.

GPSolo: What are the costs of being a poor listener?

Singerman: First, and I think most fundamentally, when one is not engaged in mindful, active listening and certainly when one interrupts a counterparty, much of the data that the counterparty was willing to offer for the asking is potentially forever lost, or at least will take longer to obtain. If I’m interrupting my counterparty and the counterparty was comfortable sharing what really mattered, their comfort may be compromised. Also, in an oral communication, there are nuances. There are seeds planted to invite follow-up questions, little teasers in which the speaker is taking a risk to see if the speaker’s counterparty—the putative listener—will pick up a subtlety and ask the next question. If the speaker is uncertain about whether a particular point is worthwhile to share,

MINDFULNESS IN ACTION

Being more aware of our thoughts, feelings, and sensations in the midst of conversation can enrich the experience for everyone.

is appropriate to share, is safe to share, and the listener misses it, again we don't know what data we could have obtained. And I don't mean in this data-gathering model to suggest anything that's gaming the system. To the contrary; I think that it's actually contributing to a way of interacting and behaving with one another that, in all likelihood, would solve a lot of problems and be immensely more efficient in communicating and exchanging data.

Data can be lost forever when one is not engaged in mindful, active listening.

the agitation, and, rather than act out on these impulses, she observes them. Many new to mindfulness find this to be counterintuitive, and, indeed, it takes practice. So it is helpful to practice traditional mindfulness exercises such as focusing attention on the breath to develop these skills in a less-provocative environment. And it can be very useful to practice "mindful listening" in the midst of conversation. In this way, it is both a means to an end (more effective

of the urge to interrupt, noting things you want to say, and even develop the ability to sit tight during such times and see what happens next. I submit to you that the discipline of the resistance to interrupting and working through it is no different from any other discipline and exercise. It takes a while to develop any skill, whether it's driving a car, or riding a horse, or working out in the gym. And sometimes it's not linear; it's a process, and there is in my estimation a high likelihood that consistently focusing on this awareness will result in the distraction of the resistance waning, and the benefits of not interrupting and gathering more and richer data will be profound.

GPSolo: In an article you wrote for the *Florida Bar Journal* on mindfulness, you referred to mindfulness practice as a form of data gathering—something you have already alluded to—and to the three buckets of data being (1) one's self, (2) one's counterparty, and (3) the environment. How does this connect to mindful listening?

Singerman: The first bucket, one's self, is for me the foundation of every other mindfulness practice. I know that sounds like a grand statement, but I think that's right. My ability to mindfully gather data from my counterparties, which is the second bucket, or from the environment, the third bucket, is enhanced or impaired by the level of my own self-awareness. The less self-aware I am of my thoughts, my feelings, my body sensations in the moment, the less accurate, rich, and robust will be my perception of the data being offered by my counterparty or the environment. Self-awareness is a filter. The more self-aware I am, the purer the data is that I take in, and the more clearly I can perceive it. In contrast, the less self-aware I am, the more contaminated, the more imperfect, the less complete the data I take in. And the decisions I make are directly dependent on the data I gather. Through the "Do Not Interrupt" practice, you become aware, very quickly, of a lot of data about the first bucket—yourself—and by becoming more skillful at being aware, observing, and, ultimately being less reactive, greater self-awareness arises and with it greater capacity to listen more

GPSolo: Thus far we have discussed the benefits of mindful listening. You also share with lawyers how mindful listening can be its own mindfulness practice.

Singerman: Yes. A good example can be drawn from a basic mindfulness practice where one establishes the breath as the object of attention. In this practice, when attention wanders from the breath, and the mindful practitioner realizes this, she returns attention to the object. This can be helpful for steadying the mind, improving focus and concentration, and regulating emotional reactivity. The key is noticing—the awareness of one's mind wandering. With mindful listening, the object of one's attention is the speaker and what she or he is saying. So that is the object of attention, and the mindful piece is the awareness brought to the experience of listening. Then, when the listener realizes "Oh, I'm thinking about something else," she becomes aware that the mind has dashed off and brings her attention back to listening. So, too, when the listener begins to feel the pangs of agitation—for example, mounting anger or frustration, and with it the impulse to interrupt, talk louder, or end the conversation—she becomes aware of

communication and outcomes) and an end unto itself (becoming more mindfully aware).

GPSolo: Do you have a suggestion or instructions for a "mindful listening" exercise?

Singerman: Yes, an interesting exercise called "Do Not Interrupt" invites you to see if you can go for a chosen period of time without interrupting anyone. Let me begin by saying it's not about getting it perfect, which is why it's called a practice. I would start one's journey with what may be an achievable goal. For example, "I'm going to endeavor not to interrupt during a conference call that I have scheduled this afternoon." One call. See how it goes. I believe that the goal of not interrupting during a single communication, or a series of communications, is going to prove to be immensely harder than one first thinks. For most of us, interrupting is so chronic as to be unconscious, unreflected upon, so natural. So target a conversation, target a conference call, target one meeting. In time, you may go a whole day. The key, however, is not merely to not interrupt, but to gather data during the moments of *wanting to interrupt*. In these moments, you can inquire how it feels to be aware

deeply to another and establish in their estimation that you are, indeed, listening such that they feel heard. That can be a game changer.

GPSolo: Some believe that practicing mindfulness is about clearing the mind of all thoughts or to not feel unpleasant emotions.

Singerman: I certainly do not believe that an end product of the study and practice of mindfulness is to forever dispatch unwanted thoughts, feelings, or sensations in the moment. I would submit to you that that's impossible. I think that the goal is to have the awareness, be it of a thought, a feeling, a sensation that may be impacting the way I am receiving data. Frequently, it is an agitating experience that prompts me to react by interrupting or to begin formulating my next question—in which my listening has dropped significantly—and the great benefit in that moment is that I do not interrupt. One of the disciplinary tools that I use, which I don't think is terribly common among lawyers in the business setting, is sharing with my counterparty some of these thoughts, feelings, and emotions—to explicitly put them out there in an effort to help dispatch them, to acknowledge them and come back to the subject of discussion. That said, I think it takes a good deal of authenticity and a willingness (and courage) to be vulnerable to do so—but it can make all the difference. In all likelihood your counterparty is having a similar experience. But it calls for awareness of one's experience to develop the skills to effectively communicate amid such challenging moments, to even take a considered step in this direction, and mindfulness practices help develop this capacity. It should be no surprise that this is useful in one's personal life as well.

GPSolo: How long did it take for you to detect any benefits or changes after you began to practice mindfulness—and mindful listening?

Singerman: I noticed profound changes nearly immediately. Now what does that mean? Does that mean I was instantaneously a better listener? No. I think the most profound realization was how dreadful my listening practices had been

before, how much I interrupted unconsciously, unmindfully, and with it a sense of regret for what I had missed along the way. I think this is an ongoing journey for me. I hope that I can continue to make net progress. It's not always linear. I have interactions with others in which I kick myself when I reflect on having been a sub-optimal listener. Did I miss X, Y, or Z? How can I have participated in that conversation and feel uncertainty now about a point that is as potentially important as this one? It's a journey. It's a process.

GPSolo: A little earlier when offering the "Do Not Interrupt" practice, you said it was not about being perfect. Lawyers do tend toward perfectionism.

Singerman: Seeking perfection may be one of the biggest distractions of all. In my life and in our law firm we've identified a core value of *continuous improvement*. I'm much more comfortable talking about a goal of continuous improvement than I am of perfection because I'm not sure I understand the connection between perfection and the human condition generally. And way beyond the scope of mindful listening, but I think squarely within the scope of enhancing our performance in all we do, I think that there is a role for being kind to ourselves and forgiving ourselves when we miss the mark. And I believe this notion of perfection, this theory of something called perfection, can be a cruel taskmaster.

GPSolo: Recently you've begun to discuss how mindfulness practice can help to "control the future." Might you elaborate, as this sounds a bit too good to be true.

Singerman: Yes, I know it sounds grand, but in this thinking I am doing about this subject I can see direct and profound benefits. It goes like this: If, as a result of mindful listening, I am better able to understand my counterparty's point and I haven't interrupted and missed crucial data by not being fully engaged in receiving the data and getting it wrong, I forgo from next comments or actions that could take my life and the subject matter of the discussion in an unnecessary, inefficient, or even injurious direction. In this way, I've controlled the future by

not having to spend time later fixing the problem that might have been avoided in the first instance.

GPSolo: Any closing comments?

Singerman: I find that I fare better in my personal and professional life when I am mindfully listening and gathering data about myself and others. I'm reminded of when we shared with our children how beneficial it can be to refrain from making major decisions when you're tired, dirty, or hungry. Now, how do I connect those dots? With awareness. The awareness of fatigue or being tired, the awareness of being hungry or out of sorts, or being dirty and uncomfortable, is closely connected to an awareness of our thoughts, feelings, and body sensations. And so in my personal life, a decision to defer executing because of an awareness of some thought, feeling, or sensation that may impair judgment is huge. Secondly, in my dealing with friends, my wife, our daughters, I am aware, for a very long time regrettably, before I began my study and practice of mindfulness, that I wasn't being respectful, I wasn't being present and doing all I could to give my counterparties, my family, my friends, my colleagues at work, the attention that they deserved by being less than a mindful listener, by thinking I could multi-task, by not turning around and listening to them, by not sometimes saying, "I want to give you my full attention, but I can't do that right now. This is important for me. Can we talk at a different time?" And I think that it's improved the communication flow with my family members, friends, and colleagues, and they've appreciated the respect even when the request is to speak at a different time. To adopt in practice and study the discipline of mindful listening doesn't mean that every counterparty controls the calendar and agenda of the listener's day. It doesn't mean that I have to accept the schedule of my counterparty and drop everything to focus on the counterparty at that moment. And one of the tools of mindful listening can be a clear communication about when one is not capable of showing up to mindfully listen. ■

September 15, 2020

4 MINUTE TO READ • 900 WORDS

Mindfulness 101: It Tastes Terrific, and Just Look at That Shine!

By Scott L. Rogers

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There is a *Saturday Night Live* skit from 1976 that offers us a humorous take on a serious aspect of mindfulness practice. Gilda Radner and Dan Aykroyd are arguing over whether a product “New Shimmer” is a floor wax or a dessert topping. Radner is about to apply it to the top of her mop while Aykroyd wants to squeeze it onto his parfait. As a can of New Shimmer shuffles back and forth between them, Chevy Chase appears behind them and says, “Hey, hey, hey, calm down, you two. New Shimmer is both a floor wax *and* a dessert topping!” Comically, Chase sprays some onto the mop and the dessert. Aykroyd swallows a spoonful and announces, “Mmmmm, tastes terrific!” as Radner mops the floor and raves, “And just look at that shine!”

Mindfulness is a bit like New Shimmer. It is a dessert topping in that practicing mindfulness can be a pleasant experience—relaxing, calming, serene. And it is a floor wax in that practicing can develop resilience and a capacity to cut through the grime of confusion and distraction, see things more clearly, and perform at a higher level. If this metaphor sparkles with any insight, know that we’ve just begun.



Many start practicing mindfulness to help relax, and many stop because it is not relaxing enough. A passage from James Nestor’s newly released book, *Breathe: The New Science of a Lost Art* (Riverhead, 2020), is telling in this regard. *Breathe* explores the power of breathing to alleviate a vast number of health concerns and to optimize wellness. While the topic is not new, Nestor does a terrific job packaging it for the reader. It is telling when Nestor briefly references mindfulness meditation on page 176 and asserts:

A wealth of scientific research shows that meditation can change the structure and function of critical areas of the brain, help relieve anxieties, and boost focus and compassion. It can work wonders, but few of us will ever reap these rewards because the vast majority of people who try to meditate will give up and move on.

So, imagine you have a can of New Shimmer in your hands and are interested in sweetening your dessert. After using it a few times, you put it away. Why? Without truly understanding how it can be both, the dessert topping can become confused with and taste like floor wax. After all, repeatedly mopping the floor, like sitting and concentrating attention on the breath—no matter how effective it may be—can feel like hard work.

While no one knows the secret ingredient in New Shimmer, the reason why practicing mindfulness is a source of both relaxation and resilience is no secret. And like all good natural remedies, there are just a few basic ingredients that you will find accessible wherever you may be: attention, the breath, and awareness. Below is a brief overview of how these three ingredients work their magic. Practicing mindfulness will bring them to life.

Attention

Most mindfulness practices involve concentrating attention on an object. This calls for attention—a fickle and limited resource—which soon enough will wander from the object. New practitioners often presume that this wandering is a problem. Ironically, this tenacious belief is itself the problem and a source of frustration and stress that interferes with the inherently calming quality of a resting attention.

The Breath

When attention is directed to an object, it begins to steady. While any object will do, the sensations of breathing are tried and true. This is why so many mindfulness exercises begin with instructions to direct attention to the breath.

Lower or close your eyes and rest attention on the sensations of breathing.

While pretty much everyone can direct their attention to the breath, this endeavor is inevitably short-lived. *Attention can't keep track of itself* and wanders off very quickly. While the wandering is neither a problem nor inherently stressful, resisting it can be extremely stressful. This is where awareness comes in.

And when you notice your mind wandering, gently focus attention on the breath.

Awareness

While you are attending to the breath, other objects ranging from sights, sounds, smells, thoughts, feelings, body sensations, and tastes will be tugging away at your attention. Rest assured, sooner than later your attention will wander off—and you will be unaware it has until you somehow become aware. That moment of realizing that your mind has wandered is like realizing a scuff mark on the floor has disappeared. This is a teachable moment and a trainable event. Enjoy it (rather than fight the moments leading up to it) for the better it feels, the more likely it is to happen again.

Conclusion

The practice of mindfulness can serve a variety of ends—from feeling better to being more aware and resilient in the midst of one's experience, whatever it may entail. The grime of our life's journey and conditioning can obscure our view of events and people, generating and interjecting biases, assumptions, and critical self-judgments into our interpretation of our experience. But just as a mopped floor becomes clean by *eliminating* grime, so, too, the act of focusing attention on the breath can lead to a feeling of calm by eliminating or limiting the extent of mind wandering—gratuitous journeys into past and future. With greater awareness of mind wandering, we mind wander less, and we begin to see things more clearly, cultivating a more stable internal environment to learn and grow from our experience. What could be sweeter?

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Faculty

Prof. Scott L. Rogers is the founder and director of the Mindfulness and Law Program at the University of Miami School of Law in Miami, where he teaches “Mindfulness in Law,” “Mindful Ethics,” “Mindfulness and Motivating Business Compliance with the Law” and “Mindful Leadership.” He also is co-founder and director of UMindfulness, UM’s Mindfulness Research and Practice Initiative. For the past 10 years he has collaborated on neuroscience research exploring the enduring brain and behavior changes that may accompany mindfulness-training programs. Since 1998, Prof. Rogers has shared mindfulness with legal professionals, and his mindfulness programs have been taught to athletes, accountants, bankers, business leaders, children, educators, financial advisors, firefighters, parents, pilots, therapists, negotiators and physicians. Upon graduation from law school, he clerked for Chief Judge Maurice Paul in the Northern District of Florida and with Hon. Rosemary Barkett, both on the Supreme Court of Florida and the Eleventh Circuit Court of Appeals. Thereafter, he practiced commercial litigation with White & Case, then joined an Internet company as its general counsel and president. In 2012, Prof. Rogers was awarded the Sookie Williams/DBR Award for Exemplary Service to the Miami-Dade Legal Community” and the “Richard Hausler Golden Apple Award” for his contributions to the student body, and in 2015 he was awarded the “Law Faculty Professionalism Award” by the Florida Bar. He is the 2018 recipient of the Mindful Kids Miami’s “Ambassador of Mindfulness” award for his more than 20 years of service sharing mindfulness with parents, teachers, and children. Prof. Rogers is author of “The Six-Minute Solution: A Mindfulness Primer for Lawyers,” “Mindfulness for Law Students,” “Attending: A Physician’s Introduction to Mindfulness,” “Mindful Parenting,” “Mindfulness and Professional Responsibility,” “The Elements of Mindfulness” and numerous journal and law review articles. He lectures across the country, speaks at law and scientific conferences, and been interviewed in newspapers and magazines for his work on mindfulness. His work at the University of Miami School of Law has appeared in the *Wall Street Journal*, and his research has been written about in the *New York Times*. Prof. Rogers received his B.S. in 1985 and his M.S. from the University of Florida, and his J.D. in 1991 from the University of Florida College of Law.

Christina Sava is an associate at Vicente Sederberg LLP in Los Angeles, which specializes in cannabis and hemp law. She serves as outside counsel to seasoned and start-up cannabis businesses in California, and advises multistate operators looking to expand their footprint across the country. Ms. Sava assists cannabis companies and ancillary service providers at all levels of the supply chain, from cultivators to retailers, in navigating local and state-level cannabis and land-use regulations, implementing compliant standard operating procedures, and launching new product lines. She works closely with California’s cannabis regulatory agencies in pursuing her clients’ needs, and is on the forefront of federal policy development in the cannabis and hemp industries. Ms. Sava speaks on the topics of mindfulness, wellness and yoga for professionals at conferences around the country, and teaches competence and wellness-related MCLEs in the Bay Area. She also serves on the Member Resources Team of the ABA’s Young Lawyers Division, where she develops wellness-related programming for national ABA and YLD conferences. Ms. Sava received her J.D. with honors from the University of Miami School of Law, where, as part of the University’s Mindfulness in Law Program, she studied and practiced at the intersection of law, mindfulness and mental health. As president of the University’s student-run mindfulness group, the Insightful Mind Initiative, she also leads various efforts to bring mindfulness practices to the student body.

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