Living (Happily) Surrounded by Conflict: Surprise! How Lawyers Are Leading the Mindfulness Revolution*

by Judi Cohen**

Lawyers perpetually manage huge volumes of difficult work in an intensely competitive environment — often forgetting to care about clients or themselves. Now, small investments in mindfulness training and support at law firms are having big payoffs.

The assignment was simple. During the mid-morning break of a half-day mindfulness training,[1] a group of Los Angeles-based corporate attorneys would head back to their offices to check messages and emails. On the way, they were instructed to say, silently, to three people they saw, "May you be well."

The group included the managing partner, four department chairs, the firm CEO, and various other partners and associates. After the break, the CEO began a debrief by shaking her head. "I didn't even know those people worked here," she said. There was nervous laughter from the associates. Then from the same table, a department chair said quietly, "I didn't see anyone worthy."

The last 40 years have produced many lawyers like these: smart, aggressive, hard-working — but with little or no training in empathy, compassion, or how to skillfully manage the relentless demands of the law. Living surrounded by conflict and hostility, they are tough but often have neither the bandwidth nor attention span to notice anything outside of their immediate line of sight. Many succumb to the stress, emotional reactivity, and hopelessness that follow from leaving their humanity at home.

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But lawyers and law firms don't need to be overwhelmed by stress and hostility, or even dominated by it. Mindfulness is an effective and much-needed antidote to the current state of the legal profession. Lawyers who train in mindfulness notice greater empathy and compassion, reduced reactivity, and more fluid, healthy relationships, even with very difficult people. They are more resilient when confronted with their own distressing emotions and the upsetting and sometimes violent emotions of others.

They are also less stressed and make better choices. Even though they continue to work in an environment of conflict and hostility, they are happier, more stable, more effective, and notice greater well-being. And they also report being better at their jobs.

The Mindfulness Revolution

The mindfulness discussion has been robust for a while. But in 2014, mindfulness went officially mainstream when *Time Magazine*'s January cover announced, "The Mindful Revolution: Finding Peace in a Stressed-Out, Digitally Dependent Culture May Just Be a Matter of Thinking Differently."

Then in November, the "proof" was reported in *Scientific American*'s cover article, "The Neuroscience of Meditation: How It Changes the Brain, Boosting Focus and Easing Stress." Numerous other articles were published in *The New York Times*, *The Wall Street Journal*, *The Huffington Post*, *The Economist*, the *ABA Journal*, *Forbes*, and other publications.

Many companies such as Google, Ford, Genentech, McKesson, and British Petroleum — companies that law firms want as clients — are way ahead of the curve. They have held mindfulness trainings for everyone from the C-suite to the mailroom. Some have held multiple or ongoing trainings. The Association for Contemplative Mind in Higher Education has an international membership of more than 650 educators and researchers committed to transforming higher education through mindfulness. Mindful Schools has trained elementary, middle, and high school educators in more than 60 countries, thus reaching over 200,000 youth, including many of our own children.

Mindfulness in the Law

Surprisingly, none of this is new to lawyers. We are not often early adopters, but in the field of mindfulness we have been some of the first.

Mindfulness first gained a toehold in the law with three articles published in the final two decades of the 20th century.[2] At the turn of the century, preeminent mindfulness teachers Joseph Goldstein and Sharon Salzberg led a series of retreats for Yale law students.

An article by Leonard Riskin, "The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients," published in 2002 in the *Harvard Negotiation Law Review*, made a comprehensive argument for integrating mindfulness

into the law. The 2010 Mindful Lawyer Conference at Berkeley Law, co-sponsored by The Center for Contemplative Mind in Society and six law schools, brought together practitioners and teachers from across the U.S. for the first time.

Also in 2010, Rhonda Magee wrote, "Educating Lawyers to Meditate?" arguing that the inclusion of contemplative practices into legal education and the profession is essential. A subsequent 2013 "Workshop on Mindfulness in Legal Education" also sponsored by Berkeley Law, enriched the discussion.

There are mindfulness trainings and courses with mindfulness-based themes at numerous law schools in North America. The first mindfulness training for lawyers inside of a corporate firm occurred in 1998, at Hale & Dorr in Boston, and was led by Jon Kabat-Zinn, the earliest and most prominent pioneer in secular mindfulness training.[3] Since then, mindfulness trainings have been offered in an increasing number of law firms in-house departments, as short trainings and full, eight- or nine-week trainings.[4] The San Francisco District Attorney's Office is currently offering a nine-week training for all Assistant District Attorneys.[5] One State Public Defender's office is in discussions to train its entire state-wide staff.

We all know that the tenor at most law firms and legal institutions is one of great caution. We are a conservative tribe.

But we are also an enormously influential tribe. Our impact on society is immeasurable, woven into the fabric of everyday life. And although we are often justly accused of being stuck in our ways, we are also more than intelligent enough to realize that the tough, cool, disconnected, angry, stressed-out approach of the last several decades isn't working.

We are seeing how mindfulness offers us the promise of something different. It introduces a methodology by which we can begin to understand how our education and training has driven us to this edge. And it presents us with an alternative path, one that is much more effective, and that affords the possibility of healing for our profession and for those we serve.

Mindfulness Defined

In ordinary conversation, mindfulness is often used to mean paying attention. But the 2,600-year-old Buddhist practice, even in its secular application, is much richer than that.

There are four components to secular mindfulness. *Paying attention* is the first, but mindfulness is about paying attention to a particular thing: *the present moment*. It is also about paying attention in a particular way: *on purpose* or with *intention*, the second component of mindfulness.

When we pay attention, in the present, on purpose, some of the things we notice are unpleasant. Therefore the third component of mindfulness is *fearless curiosity*: the willingness to pay attention even to very unpleasant things.

Non-judgment and *discernment* are the fourth and often most difficult components. Non-judgment is paying attention, on purpose, with fearless curiosity, and without judging or assessing what's there — or how we relate to what's there. Discernment follows from non-judgment. It is a specific form of decision-making that acknowledges the consequences of our words and actions and aligns them with a commitment to do no unnecessary harm.

An even simpler definition may be useful. Mindfulness is about studying the mind and, eventually, over time, gaining the ability to cultivate intentional states of mind like kindness, compassion, joy, and equanimity, all of which support effective, ethical lawyering and a quality of wellbeing that is often elusive for lawyers.

Cultivating and Applying Mindfulness

Mindfulness has two elements: *practice* and *application*.

Practice. "Practice," is just what it sounds like. Mindfulness is a skill or tool, and while some people are naturally more inclined than others to be present, intentional, curious, and non-judgmental, for most of us mindfulness is developed with training over time. This development is undertaken through various forms of solitary practice, which we use as a laboratory to understand the mind and to cultivate certain states of mind.

This laboratory may include sitting or walking in silence at the beginning or end of each day or periodically throughout the day. It may also include movement practices like Qigong or aikido.

Often a concern arises that mindfulness will take too much time away from billable hours. However, trainings can be organized to be convenient. They can take place on site, in a conference room, or in any quiet space. No special equipment such as cushions or yoga mats is needed.

In terms of practice, lawyers can devote as little as five or ten minutes to practice each day, or can choose to practice longer. Good training and consistency are the most important elements, although many people who study mindfulness are drawn to experiment with longer practice periods and retreats.

It is helpful if the firm or organization can dedicate a small space to silent meditation or movement practices, and even better if it can develop a mindfulness leadership program so that someone can lead a sitting or movement group once a week. Small investments in these kinds of supports for mindful lawyering will have big payoffs.

Application. As mindfulness practice becomes consistent, practitioners begin to naturally understand the second element of mindfulness, which is its application. Mindfulness is not "just" a laboratory to study the mind, and it is not undertaken so that practitioners will become good meditators or martial artists. We practice mindfulness so that we can be more present, intentional, fearless, curious, and non-judgmental in everyday life and, for lawyers, in our life in the law.

Once lawyers are trained and practicing, advanced workshops in specific mindfulness tools can be offered periodically. Workshops might focus on mindful listening and speaking, discernment, and compassion, among other areas. As lawyers learn and repeatedly apply basic and specific mindfulness tools, the practices become second nature. Lawyers begin to notice greater calm, efficiency, and clearer-mindedness at work; they are more thoughtful and discerning; and they are kinder to the people they work with — or sometimes they simply notice those people for the very first time.

Why Mindfulness for Lawyers?

All mindfulness training begins with practice, which is, in the best sense, an exploration of the mind. Most lawyers have never undertaken such an exploration. This is despite the fact that by now our clients, spouses, friends, and even our children probably have.

A lawyer's oath, fiduciary duties, and obligation to society make it more incumbent upon us than perhaps anyone else to obtain training. We need to understand how the (legal) mind works, and we are responsible for cultivating states of mind that support and enhance our effectiveness and wellbeing. We are also responsible for the effectiveness and wellbeing of our firms, and for the wellbeing of our clients.

Understanding the mind, or brain, is, of course, a large project. There are neuroscientists who spend entire careers studying the brain; monks and nuns who spend lifetimes studying the mind; and some who do both.[6] From a 10,000-foot view of the lawyer's mind and brain, there are two things to know — the bad news and the good news.

The Lawyer's Mind, Part I (The Bad News)

The lawyer's brain, like all human brains, operates through different message centers. In a gross oversimplification that is nonetheless helpful to understanding what lawyers are up against, there are basically two message centers in the brain. The lower, reptilian center of the brain sends messages of danger and well-being. The upper, cognitive center of the brain interprets those messages and adds reason and understanding. Both are essential.

It is important that the lower brain not overpower the upper brain and send endless, insurmountable signals of danger and stress. Unfortunately, due to our education and training, in many lawyers it does send such signals.

From the first day of law school we are trained to (1) manage huge *volumes* of difficult work, (2) engage in intense *competition*, (3) use *critical thinking* in connection with everything and everyone, and (4) be *right* every time.

These four skills are required to practice law well. But they also over-activate the lower, reptilian brain, sending the following constant danger signals:

- "I have to get everything done on time, perfectly, or I'll fail. I cannot fail."
- "Everyone is the enemy and I always need to win."
- "I'm not doing as well/working as hard/winning as much as I could."
- And the strongest signal of all, "I can never, ever be wrong."

When the lower brain receives a message of danger such as one of the messages above, its job is to keep us alive. It sends us leaping to safety when we hear brakes squealing as we step off the curb. It tosses us into the pool after a drowning four-year-old, cutting off inquiry from the higher brain about whether to first finish our drink.

The lower brain sends a signal to flee (traffic), fight (or rescue the child), freeze (stay on the curb), or collapse. (The collapse response is unusual, but some people faint at the sight of blood, for example, which is one reason they became lawyers and not doctors.)

The trouble is, perpetually managing huge volumes of difficult work in an intensely competitive environment, where you are strongly encouraged to think critically about everything and everyone and have to be right every time, is like ringing a never-ending alarm in the brain. Even reading that sentence probably sets off a panic bell.

That is why lawyers are so tough and highly reactive. It's why tempers run high. It accounts for locked-down rather than open, creative mindsets. It explains why we are afraid — or have forgotten — to care, whether about clients, ourselves, or each other. It's a big reason lawyers are so unhappy, and an even bigger reason most of them don't know why.

The Lawyer's Mind, Part II (The Good News)

Quite simply, mindfulness is the good news. It is through mindfulness research that we are now learning that the mind is inherently trainable. Rather than being fully formed by our late teens or early 20s — or by law school and our legal training — our minds remain plastic. We are able to develop new habits and patterns throughout our life. And the best tool for training the mind is mindfulness.

Scientists at Berkeley, Stanford, Emory, Brown, Yale, and other universities in the U.S. and abroad are reporting on the effects of mindfulness on the brain. Studies of people who undertake six- to eight-week mindfulness trainings show, in fMRI imaging and other testing and in self-reporting:

- Increases in gray matter in regions of the upper, cognitive brain involved in learning and memory processing, emotion regulation, self-referential processing, and perspective-taking[7]
- Enhanced abilities to cope more effectively with rapid-fire signals from the lower, reptilian brain
- An increased capacity to approach rather than withdraw from challenging events
- Increased focus and attention
- Decreased anxiety and fear
- Greater control over afflictive emotions like anger, frustration, and rage
- Deeper attunement to self and others
- Clearer thinking
- Greater happiness

The implications for lawyers are obvious. A stressed, reactive, unhappy lawyer is someone whose brain has been in fight/flight/freeze/collapse mode for too long. Her lower, reptilian brain is overpowering her upper, reasoning, understanding brain.

Mindfulness training will increase the actual volume of her upper brain, strengthening it so that reason and understanding prevail over the frequent fight/flight messages she is habitually getting. It will also enable her to cultivate qualities of mind such as focus, attention, and stability. She can train in becoming less reactive, anxious, and fearful. She can increase her ability to be compassionate, empathic, and attuned to herself and others. She can retrain herself to be more open, creative, compassionate, and caring. As the poet Galway Kinnel wrote, she can reteach herself her loveliness.[8]

Volume and Difficulty. If this lawyer is working long, hard hours, she will not feel so much like she's drowning. One lawyer who took an eight-week mindfulness course reported experiencing less of the "duck syndrome," where, for the sake of appearances, she felt she had to look calm and serene on the surface, but underneath she was paddling for her life. Instead she was able to settle and focus her mind. She could manage the volume and difficulty with greater efficiency and felt less stressed.

Competition. At a recent Inns of Court mindfulness presentation, a lawyer remarked that non-lawyers were "boring." "There are no contests, no snarky remarks," he said. It's a telling admission when you consider that most *clients* are non-lawyers. Mindfulness training could help this lawyer to be less judgmental and to connect with greater curiosity and kindness to his clients, staff, and maybe his family and friends.

Critical Thinking and Criticism. Critical thinking is so deeply embedded in us that we lawyers tend to react critically to everyone. Mindfulness training softens this edginess. One assistant district attorney mid-way through an eight-week mindfulness training reported that when someone stole his parking space on a busy Saturday night, he exclaimed to the other driver with

joy, "Have a great night!" He couldn't say whether he or his wife was more astonished. Plus, it was four days later when he reported the incident, and he was still beaming.

Meanwhile a corporate attorney said that her husband reported she was "just better" to him after the training.

Everyone Is the Enemy. In the middle of a mindfulness training at a corporate firm, one of the lawyers decided to employ compassion toward an extremely difficult opposing counsel in an ongoing matter. After he trounced his opponent, he received a call. "Thank you," the losing attorney said. "I appreciated how thoughtful you were during trial."

Being Right. A senior partner gave the green light to a client before reading his young associate's memo. Then he saw that the memo indicated the light was most definitely red. Out of fear more than malice (probably) the partner ordered the associate to call the client and take responsibility for the mistake. Mindfulness could have helped them both. The partner (probably) would have had the courage to deal with his mistake. And the associate might have had the courage to refuse, instead of making the call and then leaving the office in tears.[9]

Truth-Telling: The Real Gift of Mindfulness

In a recent mindfulness training, the assignment was to call to mind a very "difficult person." This person could be an opposing counsel, colleague, or staff member. The lawyers were instructed to sit for a few minutes with how uncomfortable the dynamic was with their difficult person, and then write a letter of understanding. Beginning with the words, "I may be misunderstanding you," and ending with "I care very much about you," each person was free to fill in the middle of the letter of understanding in any way he or she chose.

The purpose of the exercise was to learn to be fearless enough to practice law with courtesy and respect, even with very difficult people who have no training in those qualities of mind, and little natural ability. The MCLE credit for the exercise was ethics.

When the exercise was over, the lawyers shared their experiences. The last lawyer to share said, "I couldn't do it." It was an online training. The man was alone in his office at seven at night. No one would ever read the letter. But he was just too scared. Why? Because, he said, he was afraid he would be unmet. He was afraid that his difficult person would respond with words similar to those of the LA department chair who said, "I didn't see anyone worthy." Even in the privacy of his own imagination, he could not envision a scenario in which writing a courteous, respectful letter to his difficult person would be safe.

Carl Jung said, "Until you make the unconscious conscious, it will direct your life and you will call it fate." Many of the unconscious habits of mind that lawyers learn in school and in training are necessary to our work. But they are also destroying us. They are propelling the best and the brightest elsewhere, or forcing our very best qualities — our lively, creative minds and our good,

warm hearts — into hiding. If we keep our heads and hearts buried in the sand, we will continue to be at the mercy of those habits, and they will become our fate.

In 2008, when he was chief of staff for then President-Elect Obama, Rahm Emanuel said in a *Wall Street Journal* video, "You never let a serious crisis go to waste." He might as well have been talking to the legal profession.

We need to understand the current crisis in the legal profession and pay attention to it. If we do that, with great curiosity and courage, without judgment, and with wise discernment — if we don't let this crisis go to waste — we can employ mindfulness to bring wisdom, compassion, and sanity back into the law.

Endnotes:

[1] All stories except the one titled "Being Right" are from lawyers who have taken Essential Mindfulness for Lawyers® (EML) trainings from Warrior One.

[2] Rogers, S. L., "Mindfulness in Law," in *The Wiley Blackwell Handbook of Mindfulness* (eds A. Ie, C. T. Ngnoumen, and E. J. Langer), John Wiley & Sons, Ltd, Chichester, UK, 2014.

[3] Jon Kabat Zinn, a "founding father" of secular mindfulness, created the Mindfulness-Based Stress Reduction (MBSR) program and has written many influential books on secular mindfulness.

[4] In 2014, for example, Warrior One worked with Facebook, Manatt, and Keker & Van Nest.

[5] Twenty-two of the more than 80 Assistant District Attorneys at the San Francisco DA's office initially enrolled in an EML course; 12 attended the training. The ADA in charge of MCLE now wants to offer EML for the entire office.

[6] His Holiness the Dalai Lama, Richard J. Davidson, PhD, and Matthieu Ricard are perhaps the best known of these, although a few others fall into this crossover category. The Dalai Lama's talk to the Society of Neuroscience in 2005 laid the groundwork for a decade of research in mindfulness and neuroscience.

[7] Hölzel, Carmody, Vangel, Congleton, Yerramsetti, Gard, Lazar, "Mindfulness Practice Leads to Increases in Regional Brain Gray Matter Density," Elsevier, 2011.

[8] Galway Kinnell, "Saint Francis and the Sow," from *Three Books*, Houghton Mifflin, 2002.

[9] The young associate in this story is the author of this article in 1987.