Lawyer Heal Thy Self:

Resilience in Lawyering
OR
Incorporating Mindfulness Into Legal Education & Profession

Professor Katerina Lewinbuk
South Texas College of Law Houston
September 2019
Contents

I. Introduction to Mindfulness
II. Current Status of Legal Education
III. Mindfulness as a Possible Solution
IV. Conclusion
I. Introduction to Mindfulness
Emotional Intelligence

According to a study in the technology sector, the top six competencies that distinguish star performers from average performers are (in this order):

1. Strong achievement drive and high achievement standards
2. Ability to influence
3. Conceptual thinking
4. Analytical ability
5. Initiative in taking on challenges
6. Self-confidence

Which of these are emotional competencies?
According to a study in the technology sector, the top six competencies that distinguish star performers from average performers are (in this order):

1. Strong achievement drive and high achievement standards
2. Ability to influence
3. Conceptual thinking → intellectual competencies
4. Analytical ability → intellectual competencies
5. Initiative in taking on challenges
6. Self-confidence

Which of these are emotional competencies?
What is Mindfulness?

Nonjudgmental awareness, paying attention deliberately, moment to moment, without judgment, to the workings of the mind and body.

- Dr. John Kabat-Zinn
General Benefits of Mindfulness

- Improves functions of the immune system → ex. chronic pain, heart disease, anxiety, depression
- Heightens concentration, focus, mental clarity and sensory processing
- Increases overall awareness
- Allows attorneys to produce more efficient work and empathetically represent clients
II. The Current Status of Legal Education
The Negative Image of Legal Education

- 4th ranked profession → highest per capita suicide
- 3.6 times more likely to suffer from depression than non-lawyers
- 40% of law students experience depression upon graduation
- 70% of law students experience mental health issues (Yale Law School, 2014 study)
- High divorce rates
- Lawyers are twice the risk for substance abuse and addiction
The Need for Change in Legal Education

- Stigma in legal field triggered by stress

- Revitalizing the legal profession should include stress reduction

- Law schools should:
  - Identify the main stressors
  - Reduce, eliminate, and assist students in managing what cannot be changed
Challenges for Legal Professionals

Lawyers encounter a multitude of thoughts and emotions throughout the work day.

Loosing track of the present moment often causes worry or anxiety.

Mindfulness meditation can help lawyers develop an ability to pay attention, calmly, in each moment.
## Stress v. Mindfulness

<table>
<thead>
<tr>
<th>Stress</th>
<th>Mindfulness Based Stress Reduction (MBSR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduces ability to digest and process new information</td>
<td>Reduces stress</td>
</tr>
<tr>
<td>• Interference with memory capacity</td>
<td>• Increases attention and focus</td>
</tr>
<tr>
<td>Alters emotional/behavioral reactions</td>
<td>• Improves physical/mental well-being</td>
</tr>
<tr>
<td>Challenges confidence and self-esteem</td>
<td></td>
</tr>
<tr>
<td>Leads to ill health, problematic relationships and substance abuse</td>
<td></td>
</tr>
</tbody>
</table>
Opposition to Change & Arguments Against Mindfulness

- Sole job of law schools: Teach students to think like lawyers
- Opposition upholds old-established traditions of legal education
  - i.e., Socratic method
- Law schools will become more like humane societies

These arguments take away from the core issue:

Finding the best possible solution for current challenges for law students.
III. Mindfulness as a Possible Solution
Focus and Mindfulness

- Human mind wanders incessantly
  - One frequently becomes unaware of where her attention is focused at the moment

- Mindfulness:
  - Allows one to recognize thoughts and sensations as a habitual reaction to a situation
  - Allows one to “experience such thoughts, intentions and associated bodily sensations more fully, so they have less power over [the individual]; and if they have less power” over her, they can be “experience[d] . . . more fully.”
  - Teaches one to be fully present without distractions

- Studies show that meditation has impact on brain structure (neuroplasticity)
Mindfulness Meditation in Law Schools

- Benefits of mindfulness objectively verifiable by grade point averages of participants in recent study
  - Peter Gryffin, et al., Knowledge, Attitudes and Beliefs of Meditation in College Students: Barriers and Opportunities, 2 AM. J. EDUC. RES. 189 (2014)

- Enables students to perform better by enhancing ability to manage stress, concentrate, develop and sustain higher energy levels

- Improved capacity for interactions with colleagues and professors

- Students are better equipped to deal with unexpected

- Can focus on assigned tasks with greater clarity

- Improves overall well-being and efficacy
Mindfulness Meditation in Law Schools

- Several law schools have already incorporated classes in mindfulness into curriculum, mindfulness-focused contemplative practice groups, and retreats.

- In general, mindfulness classes received positively by students:
  - Ex. UC Berkeley Boalt Hall School of Law reported increased (doubled) enrollment into Introduction to Mindfulness course after the first year offered.

- American Bar Association showed support for mindfulness initiative in awarding University of Miami faculty who created a mindfulness-based course.
“Now, as a junior associate in law practice, I can attest that it’s essential, in order to be an effective lawyer, to be able to listen carefully and empathetically in order to understand a client’s needs and to solve legal problems. I learned to do that through mindfulness training… and it has been invaluable for me. More of this kind of practical training is desperately needed in law school.”

Berkeley Initiative for Mindfulness in Law Report
Integration of Mindfulness into Legal Education

• Requires solid discipline
• Serves as antidote to the Socratic method
• Equips students with tool of resilience

Complete integration of mindfulness into law practice and legal education is much needed.
Mindfulness in the Legal Profession

- Predominance of substance abuse & stress-related mental illness → implies stress is prevalent
- Client-lawyer relationship → requires interpersonal consideration & strong communication skills
- Lawyer must be in a good mental place and must remain calm and composed throughout representation
Mindfulness Benefits for Lawyers

• Regular practice of mindfulness could:
  • Help lawyers & law students feel better and perform better at virtually any task
  • Enable some lawyers to listen and negotiate better
  • Assist lawyers to be more responsive to clients’ needs & own needs

• Lawyer can make more discerning choices in negotiation, trial advocacy, mediation, negotiation, client counseling

• Enhances emotional intelligence to deal more appropriately with emotions of self and client

• Lawyers are better equipped to deal with the unexpected
Mindfulness Benefits for Trial Lawyers & Students

• Stronger connection with witnesses & jurors
• Maintains rigor in trial skill acquisition
• Cultivates internal abilities allowing students to maintain their calm & authenticity
• Helps demonstrate compassion and being open and present
Mindfulness in Legal Education & Profession

Bar Associations Involved in Mindfulness and the Law

- Arizona Bar
- California Bar
- Colorado Bar
- Denver Bar
- Dade County Bar
- DC Bar
- Florida Bar
- Federal Bar (South Florida Chapter)
- Maricopa County Bar
- Massachusetts Bar
- New York City Bar
- Vermont Bar
- Washington State Bar
- State of Texas Bar conducts occasional mindfulness-related events
### Mindfulness in Legal Education & Profession

More than 30 Law Schools Incorporating Mindfulness Instruction & Practice

<table>
<thead>
<tr>
<th>School Name</th>
<th>School Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berkeley Law School</td>
<td>University of California - Berkeley Law School</td>
</tr>
<tr>
<td>Columbia Law School</td>
<td>University of Miami School of Law</td>
</tr>
<tr>
<td>Florida International Law School</td>
<td>University of Missouri School of Law</td>
</tr>
<tr>
<td>Georgetown Law School</td>
<td>University of Florida Levin College of Law</td>
</tr>
<tr>
<td>Harvard Law School</td>
<td>University of San Francisco Law School</td>
</tr>
<tr>
<td>Phoenix School of Law</td>
<td>University of Texas Law School</td>
</tr>
<tr>
<td>Quinnipiac Law School (led by Dean Brown)</td>
<td>Vanderbilt University Law School</td>
</tr>
<tr>
<td>Roger Williams University School of Law</td>
<td>Washburn University School of Law</td>
</tr>
<tr>
<td>Saint Mary’s University School of Law</td>
<td>Yale Law School</td>
</tr>
<tr>
<td>University at Buffalo Law School</td>
<td></td>
</tr>
</tbody>
</table>
Examples of Law School Skills Courses on Mindfulness in the Legal Profession (most started in 2009-2010)

- Golden Gate University School of Law - **Contemplative Lawyering**, Fall 2010
- St. Mary’s College - **Concepts and Practice of Mindfulness**, Fall 2009
- Northwestern University School of Law - **Conflict Management in Legal Practice**, Fall 2010
- Roger Williams University - **Advanced Trial Advocacy: Integrating Mindfulness Theory and Practice**, Spring 2009
- University of California, Berkeley School of Law - **Effective and Sustainable Law Practice: the Meditative Perspective**, Spring 2010
- University of Connecticut Law School - **Contemplative Lawyering**, Fall 2010
- University of Florida Levin College of Law - **Tools of Awareness for Lawyers**, Spring 2010
- University of Miami - **Mindfulness In Law: Cultivating Tools for Effective Practice**, Fall 2013
- University of Miami - **Professional Responsibility and Mindfulness: Ethics for Lawyers in the Digital Age**, Spring 2010
- William Mitchell College of Law - **Mindfulness Skills for Legal Practice**, Fall 2010
Quality of Lawyer’s Professional Experience

Enables lawyer to notice & overcome barriers to attentive listening, including:

- Distracting thoughts & emotions
- Personal agendas
- Bias and prejudice
Today’s Lawyers

- Suffer from “burn out”
- Seek calmness and satisfaction in personal & professional life
- Seek to improve the quality of life and practice

The solution?

Mindfulness practice helps fix the aforementioned issues.
IV. Conclusion
Effective Advocacy

• Lawyer → holds position of trust (client’s closest fiduciary)

• Effective advocacy → lawyer must think calmly, clearly, and without distractions
  • Train mind to stabilize itself and return to the present moment, non-judgmentally

• Challenge: Quiet down and settle the mind

• End result: Thinking → clearer; decision-making → wiser
Overall Benefits

• Current research shows mindfulness leads to increased attention, focus, academic performance, and physical and mental well-being

• Many law schools, bar associations, and legal practitioners are currently in the Comprehensive Law movement
Richard Davidson and Jon Kabat-Zinn developed a research study of meditation in corporate employees.

- Electrical activity of brain waves was measured.

- Those in the mindfulness meditation group showed significantly increased activity in parts of their brains associated with positive emotions.

- The subjects were given the influenza vaccine.
  - Those in the mindfulness meditation group developed more antibodies than the control group.

- After eight weeks anxiety levels of the subjects was measurably lower.
• “Attentional-blink” happens when your eyes and mind blink during data processing, or a visual surprise.

• The “attentional-blink” deficit study, led by Dr. Helen Slagter showed that after three months of intensive mindfulness meditation training, the brain can learn to process stimuli more efficiently.

• The control participants were able to recall the first number lodged in a series of letters, but not the second number.

• The mindfulness meditation group was better able to recall the second number because the meditation-trained brain has more mental resources to process a second salient target through the sequence of letters.
The Effects of Mindfulness

- Mindfulness generates **high-amplitude gamma brain waves** which lead to high effectiveness in memory, learning and perception.

- Higher gamma-band activity suggests that **meditation training can change your brain at rest**, leading to strong mental “muscles.”

- Jon Kabat-Zinn’s study showed that mindfulness accelerated the healing process of diseases such as psoriasis.

- Sara Lazar’s study showed that meditators have a thicker cortex in brain regions associated with attention and sensory processing.

Chade-Meng Tan, Google's “Jolly Good Fellow” and author of Search Inside Yourself (left) and His Holiness the Dalai Lama (right)
Neuroscience and Lawyering

• Activation of the vagus nerve leads to a reduction in heart rate and blood pressure (contributing factors to stress which leads to high burn-out rates)

• Empathic circuitry and emotional relation to with clients

• Increase in feelings of empathy as a professional lawyer in response to a client’s expression

https://www.youtube.com/watch?v=R18tFWY-Ybo#t=705
The Future of Mindfulness

- Easy & positive addition to existing legal education
- Balance traditional methods of analysis with mindfulness
- Increased deep thinking & skills

• Allows law schools to further expand “thinking like a lawyer” objective
• Increased focus & efficient learning; students more prepared for legal field
• Help law schools produce competent, healthy and productive lawyers
Conceptually…

<table>
<thead>
<tr>
<th>Mind-Stabilizer</th>
<th>Self-Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Calming our overstimulated mind through meditation instead of alcohol or other bad stuff…</td>
<td>• <strong>Self-Awareness</strong>: Leads to Self-Confidence</td>
</tr>
<tr>
<td></td>
<td>• Understanding our own strengths and weaknesses and being able to access our own inner wisdom</td>
</tr>
<tr>
<td></td>
<td>• <strong>Clarity</strong>: Viewing our emotions with increased resolution and vividness</td>
</tr>
<tr>
<td></td>
<td>• <strong>Emotional Awareness</strong>: Recognizing one’s emotions and their effects</td>
</tr>
<tr>
<td></td>
<td>• <strong>Accurate self-assessment</strong>: Knowing one’s strengths and limits</td>
</tr>
<tr>
<td></td>
<td>• <strong>Self-Confidence</strong>: A strong sense of one’s self worth and capabilities</td>
</tr>
</tbody>
</table>
Riding Your Emotions Like A Horse

- Once upon a time in ancient China, a man on a horse rode past a man standing on the side of the road. The standing man asked, “Rider, where are you going?” The man on the horse answered, “I don’t know. Ask the horse.”

- This story provides a metaphor for our emotional lives

  - **The horse = our emotions**
    - We usually feel compelled by our emotions
    - We feel we have no control over the horse, and we let it take us wherever it wants to

  - **We can tame and guide the horse**
    - It begins with understanding the horse and observing its preferences, tendencies, and behaviors
    - Once we understand the horse, we learn to communicate and work with it skillfully
    - Eventually, it takes us wherever we want to go

- **We create choice for ourselves**
  - We can then choose to ride into the sunset and look cool like John Wayne
Your Mind is the Sky
Your Thoughts are the Clouds
(both white & dark, but they are just thoughts... Not your fault...)
a. Attention Training: Meditation Posture

Helpful way to find your own posture:

**Sit like a majestic mountain**
- Think of your favorite mountain
- Pretend to be that mountain when you sit
- And there you are, majestic, dignified, and awe inspiring
b. Self-Knowledge and Self-Mastery: Self-awareness IS Mindfulness

**The mind is a fluttering flag on a flagpole**

- **Flag:** represents the mind
  - In the presence of strong emotions, the mind may be turbulent like a flag fluttering violently in the wind

- **Flagpole:** represents mindfulness
  - It keeps the mind steady and grounded despite all that emotional movement
  - The stability is what allows us to view ourselves with 3rd person objectivity
Self-Motivation: Resilience

Inner Calm

- **Metaphor for Happiness:** *Think of happiness as a deep ocean.* The surface may be choppy, but the bottom is always calm. Similarly there are days when a deeply happy person may feel sad—but underneath that sadness, there is a large depth of unwavering happiness.

- **If you have access to deep inner calm in your mind, then no matter the ups and downs of day-to-day life, you can always be resilient.**
  - Nothing can get you down for a prolonged period of time because every time something beats you down, you can always rest and recover in that inner calm and, depending on how deep your practice is, bounce back quickly.
THANK YOU!
PROFESSOR
KATERINA
LEWINBUK

KLEWINBUK@STCL.EDU
WWW.STCL.EDU/