

CALL TO DUTY: SERVING OUR VETERANS P. 26

Washington State Bar
Association

NW Lawyer

MINDFULNESS and the Law

PP. 7 and 18

APR/MAY 2014
VOL. 68 • NO. 3

MOONLIGHTING ATTORNEYS P. 30 GOV. BILL VIALI P. 44
TREASURER'S REPORT P. 16 ELUL SECTION SPOTLIGHT P. 50
DEAN KELLYE TESTY P. 22 NONPROFIT BOARD SERVICE P. 38





Making the Case for Mindfulness and the Law 18

by Rhonda V. Magee

Meeting the Challenge 22

An Interview with University of Washington School of Law Dean Kellye Testy
interviewed by Claire Been

WSBA's Call to Duty 26

Readying Our Corps to Serve Washington Veterans
by Ana Selvidge

Help JAGs Help Servicemembers 28

by Captain Kevin Boden

Dancin' in the Moonlight 30

Pros and Cons of Second Jobs for Lawyers
by Natalya Maze

Lessons Learned from My First Jury Trial 34

by Joel Matteson

Tips for Successful Nonprofit Board Service 38

by Judith Andrews and Peter J. Smith

Guided by Wayfind — Ethical Fashion Is Changing Lives 42

by Joanna Plichta Boisen

In Plain Language 48

ATJ Board Celebrates 20 Years of Accomplishments
by Judge Laura Middaugh

22

26

28

30



34



38

7

42





Making the Case for MINDFULNESS and the Law

BY RHONDA V. MAGEE

By now, you've probably heard that mindfulness meditation may be beneficial to your health and well-being. With a new magazine, *Mindful*, devoted to it, and a cover story in *Time*, mindfulness is likely to continue to feature in prescriptions for living well and working effectively.

Few would argue that if the purported benefits of mindfulness prove accurate, no profession is in greater need of the benefits than the legal profession. The good news is that lawyers are beginning to discover these benefits. More and more, law schools, lawyers, and judges are examining the case for mindfulness meditation. They are reviewing the growing mountain of research detailing benefits from stress reduction to lower blood pressure, from increased empathy to improved performance on exams. And they are bringing these practices to bear to help lawyers support their own well-being and to improve their capacity to work more effectively.

As one of a small group of lawyers, law professors, and judges who have been working together for more than a decade to bring about these changes,¹ I admit to being more than a little encouraged by these developments. While the research is not yet entirely conclusive, it provides ample ground for innovation in legal education and the training of lawyers bringing the benefits of mindfulness to the profession.

What is Mindfulness and Why Should Lawyers Practice It?

Mindfulness is one of a number of practices that assist people in becoming more aware of thoughts, emotions, and physical states, and thus more capable of concentrating and developing the capacity to approach each moment with fresh presence. The practices assist people in being more deeply present and capable of choosing their responses to stimuli in their environments. Combined with recent research confirming the capacity for changes in our brain's functioning that may be supported by mindfulness, the case for including mindfulness among the trainings that lawyers undertake to support them in being their best over the course of their careers seems stronger by the day.

"Mindfulness" or "mindfulness meditation" is a form of contemplative practice, and is perhaps the most widely adopted and studied, to date. The term "mindfulness" may also be used to refer to the state of awareness and presence that commonly results from the practice of mindfulness meditation. It has been studied and introduced through a variety of religious or philosophical traditions, mostly Eastern in origin, and has become the focus of research within the fields of neuroscience and psychology. Researchers describe mindfulness as paying attention, in a particular way, with an attitude of nonjudgment, and with the intention of increasing one's capacity for awareness in the present moment. It's a universal practice that can improve the experience of any activity. As UCLA's Dr. Daniel Seigel explains it, "Mindful awareness techniques help people move towards well-being by training the mind to fo-

cus on moment-to-moment experience . . . [F]ocusing our attention in this way is a biological process that promotes health — a form of brain hygiene — not a religion.”²

Indeed, neuroscientists have elaborated on the concept of mindfulness as a universal human capacity which enhances focus on subtle aspects of one’s experience of both the external and the inner world. But while mindfulness is a capacity inherent in everyone, the full flowering of benefits from the practices takes regular practice.

Contemplative practices that have been embraced by the legal community in various workshops, retreats, and CLE/CJE programs include sitting meditation, yoga, tai chi, qi gong, and contemplative journaling, contemplative dialogue, contemplative walking, focus on developing compassion and empathy, and mindful attention to communicating by telephone.

While lawyers and judges are often drawn to contemplative practices in search of stress management techniques, the practices provide a bridge to deep reconsideration of how more meaningfully, ethically, and effectively to practice law in service to clients and community, and, if desired, to broader spirituality. Recent criticisms of lawyers and legal education highlight the need for greater attention to increasing lawyers’ capacities for self-awareness and ethical civic engagement. Contemplative practices that increase these capacities for self- and relational-awareness and ethical leadership among lawyers provide an avenue open to anyone willing to practice.

The Brief for “Law and Mindfulness”: An Overnight Success 15-plus Years in the Making

The first systematic effort to introduce mindfulness into the legal profession occurred in 1989, when Jon Kabat-Zinn, director of the Center for Mindfulness in Medicine, Health Care and Society in Boston, offered a program on his signature Mindfulness-Based Stress Reduction to judges. Subsequently, mindfulness was introduced into the legal profession through sessions on

mindfulness for mediators and mindfulness meditation training at the 400-lawyer home office of the Boston-based law firm Hale and Dorr. In 1999, the American Bar Association published Steven Keeva’s *Transforming Practices: Bringing Joy and Satisfaction to the Legal Life*, which contributed to the identification of efforts among lawyers to change the practice and training of lawyers — often including contemplative or mindfulness practices.

Nevertheless, legal historians will likely mark 2002 as the seminal year in the development of the contemplative lawyering movement. In that year, the *Harvard Negotiation Law Review* hosted a forum to discuss the implications of mindfulness meditation for legal practice and alternative dispute resolution, in conjunction with its publication of a symposium around an article by Professor Leonard L. Riskin on that topic. Professor Riskin outlined the ways that meditation assists in the development of the skills needed for more sustained, effective lawyering by enhancing law students and lawyers’ capacity to think in ways

not typically valued within the “Lawyer’s Standard Philosophical Map,” including ways that assist lawyers in better connecting with, assessing, and meeting the needs of their clients.

As the first decade of the 21st century progressed, efforts to introduce contemplative practice to lawyers, law students, and judges continued to increase, with independent meditating lawyers groups forming across the country. More than a dozen for-credit courses have been offered by a small but growing list of law schools, including the University of California, Berkeley School of Law, and the University of San Francisco. The courses are among the first to introduce contemplative approaches to lawyering into the traditional law school curriculum, either as stand-alone courses or as components of courses on alternative dispute resolution or other skills. They join other in-school offerings that expose students to mindfulness training in the law school environment, either directly or through the resources of the larger university.

Practicing lawyers and mediators are also benefiting from the increasing offerings of meditation training among CLE programs for credit towards the requirements of their state bar associations. Contemplative lawyering groups have formed within the bar associations of New York and Washington, D.C., and formally or informally in other major cities across the country. In Seattle, Washington Contemplative Lawyers, formed in 2010, now has over 100 members. And mindfulness training for judges, while still relatively uncommon, is also taking place in experiments in Washington and across the country.

The movement reached an important turning point in 2007 with the publication of the first law review article on mindful lawyering to appear in a top-ten law review, setting forth an approach to contemplative law that embodies high aspirations for its contributions to positive social change. In “From ‘The Art of War’ to ‘Being Peace’:



Mindfulness and Community Lawyering in a Neoliberal Age,” Angela Harris, Margaretta Lin, and Jeff Selbin draw together the economic and community-justice work of a particular community lawyering organization with mindfulness, as an “approach . . . toward reconciling personal and professional roles.” Moving beyond stress reduction, the authors set out a distinctly different, more complex, and more ambitious conceptualization of the connection between mindfulness and lawyering: that of aiding the lawyer in accomplishing the “collective work of peacemaking” in diverse communities and on behalf of “subordinated and disenfranchised” people. Professor Harris and her co-authors see mindful lawyering as providing “a framework for thinking about how individual action is tied to group process, how group process connects to institutionalized relations of power, and thus how transformational change at the interpersonal level is linked to transformational change at the regional, national, and global levels.” In Washington and California, the links between mindfulness and the management of implicit bias has been explored in CLE programs. In short, mindfulness can also be a transformative tool in support of the elimination of bias and the achievement of social justice.

The work of exploring the full range of benefits of contemplative practice for

law and lawyers continues. In 2010, the University of Nevada, Las Vegas, published a symposium edition dedicated to meditation and law. The lead article, by Leonard Riskin, focused on the role of mindfulness meditation as a means of handling the complex emotional context that attends most negotiations, and the symposium generated eight responses — each helpfully challenging and elaborating Riskin’s thesis. And the first national conference on meditation and law, which took place in October 2010 at the University of California, Berkeley School of Law, brought together a cross-section of lawyers, law professors, and judges looking at the intersections from a variety of angles. A follow-up conference for law professors last June, sponsored by the Berkeley Initiative for Mindfulness and Law, drew more than 50 law professors and law school support staff from over 30 law schools.

As law schools begin to incorporate these practices, lawmakers are taking notice: in his new book, *A Mindful Nation*, Ohio Congressman Tim Ryan prescribes research and initiatives in mindfulness to assist lawmakers and citizens alike in resolving tough problems at every level, and improving our communities.

The 2010 Berkeley conference was also important for the current development of contemplative practices within the Washington State Bar. Sevilla

Rhoads, a labor and employment lawyer at Seattle’s Garvey, Schubert and Barer, met Sherry Williams, a long-time public defender for Pierce County (now retired), at the conference. They returned to the Seattle area with a commitment to expand opportunities for the development of contemplative practices and law in Washington. They joined with others and established the Washington Contemplative Lawyers (WCL), which holds weekly group meditation sessions at the Bar office. Through the groundbreaking contributions of Rhoads, Williams, and others, WCL has since offered numerous programs on mindfulness and law for WSBA members, including presentations for the statewide Washington Attorney General offices and Washington Women Lawyers.

In 2012, WCL collaborated with Seattle University to hold a symposium on mindfulness and law, where speakers and lawyers described how these practices provide support. The sold-out, day-long event offered CLE credit and I had the honor of leading the audience in an exploration of the personal, interpersonal, and inter-systemic benefits of mindfulness. In a brief meeting, then-President-elect Patrick Palace and I discussed his visionary commitment to work toward continued infusion of contemplative practices into lawyer education, in support of both lawyer well-being and effective client service. As a follow-up, Palace and WSBA leadership planned an innovative exploration of contemplative practices for lawyer well-being and effectiveness in a session co-led by Sherry Williams. Under President Palace, the Washington State Bar has emerged as a leader in integrating opportunities for lawyers to how these practices might assist in making the most of their practices, for the benefit of themselves, their clients, and the broader communities they serve.


Test the Case: An Eight-Week Challenge

In short: the slow but sure expansion of law school course offerings, CLE workshops, retreats for the bench and bar, as well as cutting-edge scholarship, confirms that interest in mindfulness and law has grown steadily within the profession over the past decade and that, across a variety of practice settings and objectives, it works.

So, has the case for exploring mind-

**General aviation accidents
to major airline disasters**

Robert F. Hedrick, James T. Anderson
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101
info@aviationlawgroup.com

 aviation law group ps
206.464.1166 | aviationlawgroup.com

fulness as a supportive practice for lawyers been made? You be the judge. But please note: mindfulness is called a “practice” for a reason. The research to date suggests that these practices work a good percentage of the time for those who work the practices. If you’ve already begun to explore them, do they work for you? If you haven’t, might they? Only experience will tell. I challenge you to attend a workshop or take a course on mindfulness. Experience it for yourself, and practice it for eight weeks. Let us know what you find. **NWL**



RHONDA V. MAGEE is professor of law and Dean's Circle Research Scholar at the University of San Francisco,

where she teaches torts, race and law, and contemplative lawyering. She serves as president of the board of the Center for Contemplative Mind in Society. She has it on good authority that Washington Contemplative Lawyers meets every non-holiday Monday at the Washington State Bar Association offices for both a facilitated mindfulness exercise and how to implement mindfulness into law practice. Sign up early for WCL's programs: they regularly fill up.

NOTES

1. The group grew out of the Center for Contemplative Mind in Society's Law Program as the San Francisco Bay Area-based Working Group for Lawyers History, Center for Contemplative Mind in Society, www.contemplativemind.org/about/history.html (last visited Feb. 17, 2011). While the law program ceased to exist as a program of the Center for Contemplative Mind in Society in January 2012, the center continues to support the development of academic programs for law students.
2. Daniel J. Siegel, "Mindsight: The New Science of Personal Transformation" 83 (2010). See also Shapiro & Carlson, *supra* n. 1, at 4 ("[O]ur intention is to present mindfulness as a universal human capacity.").

For your really tough case on appeal—CALL US.

We have a track record of success:

- Davis v. Baugh Indus. Contractors, Inc.*, 159 Wn.2d 413, 150 P.3d 545 (2007)
(ends completion/acceptance doctrine)
- Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 208 P.3d 1092 (2009)
(strict liability is retroactive)
- Little Mountain Estates Tenants v. Little Mountain Estates MHC, LLC*,
169 Wn.2d 265, 236 P.3d 193 (2010)
(mobile home landlord tenant act)
- Phoenix Development v. City of Woodinville*, 171 Wn.2d 820, 256 P.3d 1150 (2011)
(city's denial of rezone)
- Whatcom County Fire District No. 21 v. Whatcom County*, 171 Wn.2d 421, 256 P.3d 295 (2011)
(authority of fire district)
- Kiely v. Graves*, 173 Wn.2d 926, 271 P.3d 226 (2012) (adverse possession of dedicated alley)
- AUTO v. State*, 175 Wn.2d 214, 285 P.3d 52 (2012)
(tribes not indispensable parties to litigation)
- Clemency v. State*, 175 Wn.2d 549, 290 P.3d 99 (2012)
(application of estate tax to qualified terminable interest trusts)
- Washburn v. City of Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013)
(city liability in service of anti-harassment order)

Talmadge/Fitzpatrick

(206) 574-6661 tal-fitzlaw.com

KNOWLEDGEABLE, EXPERIENCED, EFFICIENT



Work+Wellness
Webcasts

Stress Less: Mindfulness 101

June 18, 2014, noon–1:30

WSBA Conference Center and Webcast

CLE credits pending.

This program is designed to provide attorneys with tools they can use to cope more effectively with stressful lives and demanding professions. Mindfulness as a practice and as a lifestyle challenges the belief that we can productively multitask, instead suggesting that one can both improve productivity and decrease stress by learning to focus awareness on the present moment.

Presenters: Patrick Palace, WSBA President, and Sherry Williams, former Pierce County public defender and cofounder of Washington Contemplative Lawyers

To learn more: <http://bit.ly/workandwellness>