Offering and Teaching Mindfulness in Law Schools

By Tim Iglesias*

Mindfulness is a form of meditation in which a person focuses her attention on her breathing to anchor herself in the present moment. When thoughts, feelings, or anything else attracts her attention away from the breath, she might briefly acknowledge what it was that took her attention and then, without any judgment, return her attention to her breathing.

Over the last decade, mindfulness courses have proliferated in law schools nationwide. Now is an appropriate time to ask two interconnected questions: First, what are we teaching in these courses? And second, how do we attract students to these courses?

In this Article, I will explore these questions and offer my answers based upon my experience teaching a mindfulness course at the University of San Francisco School of Law. Clarity about what we professors are teaching will both improve our instruction and enable us to promote our courses.

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1. This is my personal definition of mindfulness. There are many others that are substantially the same. See e.g., Leonard L. Riskin, Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium, 61 J. LEGAL EDUC. 634, 635 (2012) (“[Mindfulness] generally refers to a deliberate, present-moment non-judgmental awareness of whatever passes through the five conventional senses and the mind — to simplify: emotions, thoughts, and body sensations.”), Janice Marturano, a mindfulness teacher, defined the practice more succinctly as “intentionally paying attention to the present nonjudgmentally.” Alina Tugend, In Mindfulness, a Method to Sharpen Focus and Open Minds, N.Y. TIMES (Mar. 22, 2013), http://www.nytimes.com/2013/03/23/your-money/mindfulness-requires-practice-and-purpose.html.

2. See Karmah Elmusa, Law Schools Teach the Practice of Meditation, CAL. LAW. (June 2013), http://www.callawyer.com/clstory.cfm?eid=929087&wteid=929087_Law_Schools_Teach_the_Practice_of_Meditation (listing UC Berkeley, University of San Francisco, UCLA, University of Connecticut, Phoenix School of Law, University of Miami, University of Florida, and University of Missouri as schools that have embraced mindfulness programs).

3. I write in the first person as a person identified with the mindfulness movement. I have taught a two-unit credit/no credit mindfulness course called Contemplative Lawyering at USF School of Law since 2010. Tim Iglesias, USF SCHOOL OF LAW, http://www.usfca.edu/law/faculty/tim_iglesias/ (last visited Jan. 20, 2014).
effectively and with integrity. Those who teach and support the promotion of mindfulness in legal education have an obvious interest in the answers to these questions. With the increasing popularity of mindfulness,4 everyone in the legal field could benefit from these reflections.

When I mention that I teach meditation to law students, people invariably respond in one of three ways: (1) “Finally!” (showing immediate understanding and support); (2) “What?!” (conveying presumptive skepticism about its value); or (3) “Huh?” (indicating a mix of both confusion and curiosity). Now, mindfulness has become a national movement.5 It is also a well-established phenomenon in the legal community, as demonstrated by widely-attended conferences at Harvard Law School6 and Berkeley Law School,7 the creation of several mindfulness institutes at established law schools,8 the five essays on mindfulness published by the Journal of Legal Education,9 and the newly-created Mindfulness in Law Affinity Group of the

4. See Elmusa, supra note 2.
9. Riskin, supra note 1, at 634.
American Association of Law School’s Balance in Legal Education Section.10

There are good reasons for the popularity of mindfulness in law schools. First, mindfulness is a proven antidote to well-documented stress and other problems widely experienced by law students and practicing attorneys.11 A trove of medical and other scientific studies attests to the benefits of mindfulness.12 Second, mindfulness courses emphasize skills training, and ethical and professional identity development, which are advocated for by the MacCrate and Carnegie Reports.13

Participants in the legal education mindfulness movement perceive a wide variety of rich opportunities for lawyers and students. And some of us experience fervor for spreading the “good news.” However, as one might expect, there are also questioning and critical voices in the press and blogs.14 As I discuss below, I have some concerns about unbridled exuberance about mindfulness because of the context of law schools in the contemporary U.S.

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10. E-mail to author (Sept. 12, 2013, 1:30 PM PST) (on file with author) (sender’s identity omitted to preserve privacy) (announcing the Executive Committee’s unanimous endorsement of the Affinity group).


12. Pickert, supra note 5, at 45 (“Altogether, in 2003, 52 papers were published in scientific journals on the subject of mindfulness; by 2012, that number had jumped to 477.”); see generally MINDFULNESS RESEARCH MONTHLY (Am. Mindfulness Res. Ass’n, L.A., Cal.), https://goamra.org/publications/ (last visited Feb. 13, 2015) (providing a monthly bulletin with over 9000 subscribers that reports the latest scientific advances in mindfulness).


14. See, e.g., Ron Purser & David Loy, Beyond McMindfulness, HUFFINGTON POST (July 1, 2013, 10:31 AM), http://www.huffingtonpost.com/ron-purser/beyond-mcmindfulness_b_3519289.html (“The booming popularity of the mindfulness movement has also turned it into a lucrative cottage industry. . . . So far, however, no empirical studies have been published that support these claims.”); see also Dan Hurley, Breathing In vs. Spacing Out, N.Y. TIMES (Jan. 14, 2014), http://www.nytimes.com/2014/01/19/magazine/breathing-in-vs-spacing-out.html (discussing potential “unwanted side effects” of the mental focus that the author ascribes as the objective of mindfulness).
In keeping with the shared commitment to be mindful, it is appropriate to reflect now on what we are doing.

I. What Are We Offering and Teaching in Mindfulness Courses?

A myriad of complex issues are embedded in this question: (1) How do we present the “benefits” of mindfulness to other faculty and prospective students? (2) How do we use the science supporting it? (3) What do we claim is needed to reap the benefits? (4) How do we describe the relationship between mindfulness and lawyering skills or legal practice? (5) What do we believe about how mindfulness relates to values and to religious, spiritual or wisdom traditions? (6) What do we expect or hope our students will experience? (7) Completely apart from our intentions, is mindfulness transformative of people whatever their initial intentions? (8) If so, should this be disclosed to prospective students?

The many varying and evolving answers to these questions demonstrate that the mindfulness movement is not uniform in its views. For example, there are different positions on the relationship between mindfulness and Buddhism and on how that relationship should be communicated. Moreover, in my view, the U.S. cultural context presents mindfulness promoters in law schools with a predicament: How do we attract students without either overpromising the benefits of mindfulness or understate the demands of a sustained meditation practice? And, as promoters, we want to signal the potential importance of the course to them as lawyers and persons, but not scare them with fears of being proselytized into a particular


17. Interestingly, Kate Pickert stated that “[i]n the months since [my meditation training], I haven’t meditated much, yet the course has had a small—but profound—impact on my life.” Pickert, supra note 5, at 46. For me, this statement encapsulates the challenge: she is clearly aware of the potential benefits, but seems to have a hard time actually committing herself to regular practice.
religion, faith tradition, or spirituality.18

There is no consensus about any of these issues within the mindfulness movement. In this Article, I intend to raise these questions and provide my own preliminary views to further the conversation rather than resolve the issues. If we fail to reflect on these issues, we risk misrepresenting what we are offering, leaving students disappointed and dissatisfied, and even undermining the movement’s potential success.19 After briefly describing the relevant contexts, this Article will address these issues under three themes: practice, benefits, and values.

II. The Critical Contexts: Law Students and U.S. Culture

While it is dangerous to generalize about law students and U.S. culture, this Article’s form both provides an excuse for such generalizing and, in fact, requires it. I assume most law students are busy, stressed, and interested in developing practical legal skills and securing employment after law school. They can also be critical of anything “untraditional” and, sometimes, cynical. I view U.S. culture as thoroughly affected—if not dominated—by an instrumentalist or utilitarian expectation of education as exemplified by the request, “Teach me something I can use to do (or get) what I want.” This view tends to create expectations for a direct, observable benefit from any effort.

Together these contexts present a risk and a challenge. We may think we need to market mindfulness in a certain way to get students in the door.20

18. This Article is limited to a version of mindfulness that is self-consciously secular. Some mindfulness courses are explicitly based in Buddhism. See, e.g., Deborah Calloway, Are You Listening? Contemplative Lawyering, 9 BODHIMAG 130, 130 (2007).

19. Others in the movement do not share my qualms. For example, one law professor, who is a self-described longtime Buddhist practitioner, explained that he is not disturbed by the “McMindfulness charge” because it is not his goal to make everyone a Buddhist. He stated:

I am not only comfortable with pitching my aspirations at the more mundane level of stress reduction, focus, performance, happiness, etc., I also think that it would be affirmatively inappropriate to pitch [mindfulness] at any other level given the range of religious and spiritual traditions, contemplative practices, and other orientations that people bring to their study and practice of the law that mindfulness in law movement must respect and embrace.

E-mail to author (July 6, 2013) (on file with author) (sender’s identity omitted to preserve privacy).

20. Elisha Goldstein, Beyond McMindfulness: Throwing the Baby Out with the Bathwater, PSYCH CENTRAL (July 11, 2013), http://blogs.psychcentral.com/mindfulness/2013/07/beyond-mcmindfulness-throwing-the-baby-out-with-the-bathwater/. Regarding packaging mindfulness as a stress reduction tool “but with a subversive intent to transform society,” one mindfulness promoter stated that “the legal community is indeed a skeptical one, and as we are finding, we often need to resort to such subversive tactics to even bring it into existence in our profession.” E-mail to author (July 11, 2013, 5:09 PST) (on file with author) (sender’s identity omitted to preserve privacy).
One alternative would be to present mindfulness as a scientifically proven technique to achieve particular benefits and solve law students’ problems. But such descriptions of the course and mindfulness may unintentionally raise particular expectations that are not helpful. It turns out that mindfulness is easily misunderstood in the law school context.

If we primarily promote mindfulness by promising specific benefits, we risk eliciting expectations of clear, immediate and quick results, especially in the U.S. consumerist and utilitarian culture. In my view, some popular presentations of mindfulness convey this flavor, suggesting for example, that just taking one mindful breath can be life changing. These presentations have been justly criticized as promoting “McMindfulness” as a marketable commodity. Given the reigning consumer mentality, emphasizing scientifically validated benefits in our invitations may risk overselling and creating early disappointment, which can hinder a student’s willingness to commit to developing a sustainable practice.

### III. The Practice of Meditation: Not Just a Technique or a Quick Fix

First, what are we teaching? Are we teaching mindfulness as a technique (essentially a tool that a person can use to achieve a chosen objective) or as a practice (a committed habit that incorporates a value-laden view of the world)? In my course, Contemplative Lawyering, the primary requirement (other than participation in class meetings and journaling) is developing a sustainable meditation practice. I believe that most of my colleagues who offer mindfulness courses share this as a hope—if not an explicit goal—for their students. The goal is to ensure that meditation becomes a good habit.

I think our utilitarian culture readily understands proffered techniques

21. Purser & Loy, supra note 14 (“Uncoupling mindfulness from its ethical and religious Buddhist context is understandable as an expedient move to make such training a viable product on the open market. But the rush to secularize and commodify mindfulness into a marketable technique may be leading to an unfortunate denaturing of this ancient practice, which was intended for far more than relieving a headache, reducing blood pressure, or helping executives become better focused and more productive.”).

22. Tugend, supra note 1 (“The way [mindfulness is] presented in the media, people begin to believe it’s a magic pill, . . . [they merely think] ‘I’ll clear my mind and I’ll be peaceful and stress-free. If that’s what people think, they’ll be disappointed.’”).

23. The Meditative Perspective, CENTER FOR CONTEMPLATIVE MIND IN SOCIETY 1 (Oct. 2010), http://www.law.berkeley.edu/files/The_Meditative_Perspective.pdf (“Meditation is a tool that lawyers have used to cultivate skills and resources to improve their work in the legal profession.”) (emphasis added).

24. Id. (summarizing the case for mindfulness in law prepared by the Bay Area Working Group on Law and Meditation).
to achieve certain outcomes. However, the concept of a “practice” is alien to the individual, rational actor model, which often dominates in law school education. Traditionally, a practice is pursued not for the instrumental benefits it offers, but because of the perceived intrinsic worth and the hope or expectation that it will lead (somehow) to goodness for life. To be sure, mindfulness, like every practice, includes some techniques that must be learned (maintaining good posture, for example), but it is best understood as a practice rather than a technique. In my view, the full benefits of mindfulness are only achieved with a regular, long-term (if not lifelong) practice.

Second, how do we present mindfulness? How do we communicate that mindfulness is important given the utilitarian philosophy engrained in law schools and our cultural? Most likely, people will misinterpret the benefits of mindfulness in these contexts as assurances that it will produce evident and predictable physical and psychological benefits each time it is performed. Students imbued with this view are likely to give up on mindfulness when they inevitably suffer disappointment and resort to buying a 5-Hour Energy Drink instead.

Most mindfulness courses will be classified as skills courses. But they are different from other skills courses, such as mediation or trial skills, because mindfulness courses usually teach lawyering skills indirectly rather than directly. In my course, I explain that mindfulness develops certain human capacities, such as self-knowledge, working with our emotions, and capacity for concentration. These capacities, in turn, are the bases for important lawyering skills, such as communication, client counseling, conflict resolution, and creative problem solving. Throughout the course, we role-


27. See Tugend, supra note 1 (discussing the concern that those new to mindfulness will be impatient and resort to quicker, and perhaps less effective, alternatives).

28. “Skills courses” offered in law schools attempt to teach law students practical legal skills, such as client interviewing and negotiation, rather than legal doctrine and analysis, which are the focus of most traditional law school courses.

play and perform other exercises, which enable the students to explore how mindfulness can apply to typical legal tasks. A few mindfulness practitioners, who are also lawyers or judges, visit the class as guests to share their stories on how mindfulness serves their legal practice.

IV. Benefits: Mindfulness Is Neither Magic nor an Elixir

Mindfulness has been associated with a wide and impressive array of benefits, including reduced anxiety, better health, greater work productivity, increases in creativity, and many more.30

In my opinion, the technique view, which expects direct and immediate benefits, promotes a common confusion that the goal of mindfulness is attaining a particular state of mind (e.g., peace and relaxation), rather than being in the present moment, attentive to all that arises within us in an accepting and non-judgmental way.

The objective of mindfulness is subtle and unlike most of our other activities. In mindfulness, we are training our attention. The practice is to pay attention to whatever is actually happening in the present moment—nothing more and nothing less. The objective is only to focus your mind on your breathing while you are also aware of your surroundings and to gently, without judgment, return your awareness to your breath when you realize your mind has focused on something else.36

Goal orientation and immediate critical evaluation are two of the most common difficulties expressed by my students in class or when journaling about meditation. Especially at the beginning of the course, many students experience what some mindfulness practitioners call “monkey mind”—the

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32. Schwartz, supra note 30.
33. Id. (pointing to artists that meditate, including 50 Cent, Lena Dunham, and Alanis Morissette).
34. Id. (“Here’s the promise: Meditation—and mindfulness meditation, in particular—will reduce your cortisol level, blood pressure, social anxiety and depression. It will increase your immune response, resilience and focus and improve your relationships—including with yourself. It will also bolster your performance at work and provide inner peace. It may even cure psoriasis.”).
35. See Tugend, supra note 1 (“We want to get things done, to identify and fix problems. And that’s the opposite of what mindfulness is all about.”).
36. See Riskin, supra note 1; see also Tugend, supra note 1.
37. “Monkey mind” is a term used to describe the “agitated, easily distracted and incessantly moving behaviour of ordinary human consciousness.” Monkey Mind, GUIDE TO BUDDHISM A TO
incessant jumping around and chatter in our consciousness—for substantial periods of their meditations. Thoughts, feelings, and judgments—some of which are definitely not peaceful—frequently come up during meditation.\textsuperscript{38} Students are frustrated by this and tempted to suppress their thoughts or feelings because they think meditation should lead to a clear and peaceful mind. They typically judge themselves harshly, thinking, “I’m not good at meditation because I keep having all of these distractions.” If students’ expectations (fostered by a professor’s presentation) are that mindfulness is a simple technique that is scientifically proven to bring immediate peace and relaxation, they will be confused, if not outright disappointed, when they encounter these typical difficulties of the practice.

I believe that the primary benefits of the practice come not as deliberately sought-after experiences, but as by-products of doing the practice regularly. I tell my students that once they have been practicing meditation consistently, they will develop the capacity to be content with whatever is happening in the present moment, whether it be joy, sadness, peace, anger, boredom, fear, satisfaction, loneliness, or panic. They will accept themselves more. They will no longer avoid the present moment. They will now think, “I can handle it.” That confidence provides them with great freedom to be present to whatever is actually happening in a situation, and then to respond (rather than merely react) to the situation.

So, how should we present the benefits? It is tempting to seize on the scientific findings as a validation for mindfulness. I think this is especially true in our empirically dominated culture, in which “scientific truth” is often promoted as a privileged type of truth, if not the only source of truth. Reliance on science is risky for two reasons. First, while scientific studies to date are supportive, they remain inconclusive.\textsuperscript{39} Most studies have not tested whether a practice of walking with a friend, fishing, or mountain climbing might yield the same or similar benefits as mindfulness meditation.\textsuperscript{40} The

\textsuperscript{38} Some students experience emotions and memories that are painfully destabilizing, for example, the recognition that an intimate relationship is fundamentally flawed and must be addressed. This fact raises a different concern: How should we be preparing ourselves for teaching these courses? Should there be any “quality control”?

\textsuperscript{39} See Pickert, supra note 5, at 43 (“The science—particularly as it applies to mindfulness—is far from conclusive.”); see also Tara Laskowski, New Study Shows Meditating Before Lecture Leads to Better Grades, \textit{George Mason Univ. News} (Apr. 9, 2013, 5:01 AM), http://newdesk.gmu.edu/2013/04/new-study-shows-meditating-before-lecture-leads-to-better-grades/ (“One difficulty for researchers who study meditation is that the supposed benefits of meditation do not always replicate across different studies or populations, and so we have been trying to figure out why.”).

\textsuperscript{40} Laskowski, supra note 39 (“Youmans [the researcher] also suggests that, in theory, other
well-established physiology of how endorphins impact our bodies and minds when we engage in physical exercise, producing “scientifically proven” experiences and benefits that are predictable, may be different from the physiology of mindfulness, which is still being studied. Second, reliance on science and, by extension, the scientific method, can be limiting because it can implicitly cast doubt on the other forms of knowledge and truth that most mindfulness courses hope to inculcate (such as self-knowledge and interpersonal knowledge).

If we reject both the technique and scientifically proven views of mindfulness, then the most apt metaphor for mindfulness is as an exercise regime. Most Americans can appreciate that commitment to an exercise practice means doing it day in and day out whether one feels like it or not, and that the important benefits emerge over time, not discretely with each workout. Yet the exercise metaphor is limited. Judge Ron Greenberg, a longtime meditator, distinguishes the “state effects” (which occur during the practice itself) from the “trait effects” (which are changes that persist well beyond the meditation session) of meditation. The trait effects may not develop for some time and are only subtly noticeable initially. Moreover, they require a certain level of openness and engagement by the student. One such trait effect is deeper self-knowledge, which can neither be engineered nor forced.

forms of active self-reflection such as prayer, taking long walks or even just taking the time to mindfully plan out your day in the morning could have some of the same positive effects as meditation.”.

41. See, e.g., Exercise and Depression, WebMD, http://www.webmd.com/depression/guide/exercise-depression (last visited Jan. 29, 2015) (“When you exercise, your body releases chemicals called endorphins. These endorphins interact with the receptors in your brain that reduce your perception of pain. Endorphins also trigger a positive feeling in the body, similar to that of morphine.”).

42. The current scientific literature on the effects of mindfulness is vast, comprising thousands of articles, and is beyond the scope of this Article. Mindfulness Research Monthly is a monthly bulletin edited by David S. Black, Ph.D., which reports on the latest scientific research on mindfulness. MINDFULNESS RESEARCH MONTHLY, supra note 12.

43. Pickert, supra note 5, at 43 (“Instead, they advocate a commonsense approach: think of your attention as a muscle. As with any muscle, it makes sense to exercise it [in this case, with meditation] and like any muscle, it will strengthen from that exercise.”). Dr. Jon Kabat-Zinn is a national leader of the mindfulness movement, author of FULL CATASTROPHE LIVING (REVISED EDITION): USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS (rev. ed. 2013), and founder of MBSR (mindfulness-based stress reduction).

44. Ron Greenberg, Now and Zen, CAL. LAW., Apr. 2003, at 28.
V. Values: Education Is (or Should Be) Formational and Transformational

Most of us do not teach mindfulness as a mere instrumental technique to achieve any objective a person wants. Those who assume that mindfulness is only associated with mellow, non-violent people might be surprised to learn that the U.S. military uses mindfulness in training its Special Forces. The reason mindfulness has been adopted in business, and even the military, is because it fosters the development of deeper human skills that can then be directed toward any goal. This raises the question of whether certain values are taught with or are inherent in mindfulness training.

What values do we teach? Or, what do we teach about values? Many mindfulness courses directly encourage students to practice values such as empathy, compassion, and even love. The version of mindfulness that is most commonly taught in law schools is derived from vipassana—a type of Buddhist meditation. Some may believe that the values of mindfulness are inherently rooted in the spiritual tradition of Buddhism (or some other value system such as Christianity) and that you cannot (and should not) separate the meditation practice from the tradition. Others believe that the practice itself (apart from any explicit or implicit reference to its traditional roots) inculcates these virtues. The explanation for this dynamic might be that mindfulness practice creates empathy and compassion for ourselves, and


46. Greenberg, supra note 44 (“Among the main trait effects are improved concentration, empathy and perception; decreased anxiety and stress systems; overall improvement in psychological and physical health; alleviation of many symptoms in the chronically ill; and more effective performance in a broad range of activities, including sports, academic test taking, and creativity.”).

47. See, e.g., Riskin, supra note 16, at 3 (attributing mindfulness to the Buddhist practice of vipassana).

48. Purser & Loy, supra note 14 (criticizing the secularization of mindfulness).

eventually leads us to naturally extend these feelings toward others. Still, other mindfulness teachers may think that even if certain values are not inherent in mindfulness practice itself, there are other reputable authorities to justify teaching these values in law school.

Empathy and compassion are not uncontroversial in the legal profession. If we need to justify why we are teaching these values to future lawyers, we can explain their instrumental value in successful interactions with others (as demonstrated in the field of negotiation), or appeal to the fact that nearly all spiritual and wisdom traditions converge on these virtues as fundamental to human happiness. Nevertheless, some students may reject these views and cling to a belief that only self-interest and competition are necessary for success and even that these values are normatively justified. Without some change of mind and heart, these students will only be interested in mindfulness as a technique for self-advancement, if at all.

Whatever the source of the values taught in mindfulness courses, we need not be sheepish about the fact that we are teaching values. The Carnegie Report validates value-education and professional identity formation in law schools. We have “permission” and are in fact challenged to teach values in law school; the questions remain, however, as to which values we should teach, how those values are grounded or justified, and how to most effectively convey them.

All education (properly understood) can, and perhaps should, have at least the potential for profound transformation. We have heard stories of how education opened horizons, changed lives, and we rejoice in these stories. The traditional goal of legal education was to get students to “think like a lawyer.” This can be transformational for students and even result in some students not liking “who they become” through the process. A mindfulness practice can change that student’s perspective, but only if they give themselves to the practice. In my course, I explain that students can engage in the course at three levels: (1) learning to manage stress, (2) learning lawyering skills, and (3) pursuing personal growth. I require them to engage at the first two levels and make the third level optional. Most students engage at all three levels, and I have witnessed quite a few transformations.


51. See NARROWING THE GAP, supra note 13.
Conclusion: Mindful Transparency

Offering mindfulness courses to law students presents communication and pedagogical challenges. We should promote mindfulness courses as being valuable to law students because they can improve legal skills while they develop themselves as professionals and human beings. We should be clear that we are inviting students into a practice—not promising quick and simple benefits. We should be open about the values that we are teaching, in conjunction with the practice and their sources, as well as the transformative potential of the practice. Finally, we should accept and acknowledge that although almost anyone who tries mindfulness is likely to benefit from it, it may not be a universally beneficial practice; some may find that other contemplative traditions or other practices better suit them.