

Knowing Yourself: Mindfulness

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Editors' Note: How are you supposed to negotiate effectively if you can't concentrate on the signals your counterpart is giving? How can you look your client in the eye and say you've done your best if you allow that routine mindlessness—to which we're all subject—to occur without even a conscious attempt to fight it? Riskin summarizes years of research on techniques for improving concentration.

A Problem: Mindlessness in Negotiating

It is a fact of the human condition that we are suffused with fears, insecurities, passions, impulses, judgments, rationalizations, assumptions, biases, and the mental shortcuts that some academics call “heuristics.” [Korobkin & Guthrie, *Heuristics*] These can be more or less available to our conscious awareness, and we can be more or less able to resist them.

Such mental and emotional influences, of course, help guide us through life and through professional activities, including negotiating and lawyering. The problem is that they also can interfere with our ability to do these activities well. They can, for instance, draw our attention away from where we want it to be. When we want to listen to a client or read a document, we may be distracted by worries about whether the client likes us, or by thoughts (or chains of thoughts) about almost anything—the laundry, whether we made the right career choice, or why we didn't schedule that trip to the Bahamas. The less conscious awareness we have of these impulses, fears, passions, thoughts, and habitual assumptions and behaviors, the more likely we are to succumb to them.

The mind tends to wander, and very often we do not realize where it has gone. Usually it is dwelling in the past or future, keeping us from paying attention to the present moment. Understood in this way, intermittent mindlessness—which, to Harvard psychology professor Ellen Langer, means “the light's on but nobody is at home”¹—can affect and afflict just about everyone in conducting virtually any activity.

Mindlessness impairs our work as practitioners of dispute resolution in several ways. First, it can stop a negotiator from being “present” with the other participants or with herself, which means she is not fully aware of what is going on. Second, in the grip of mindlessness, we sometimes rely on old habits and assumptions, rather than deciding what behavior is most suitable in the precise

From *THE NEGOTIATOR'S FIELDBOOK* 239-50 (Christopher Honeyman & Andrea K. Schneider, eds., American Bar Association 2006).

circumstances we are encountering. Manifestations of mindlessness, according to Professor Langer, include being "trapped by categories,"² "automatic behavior,"³ and "acting from a single perspective."⁴

This is a special problem for many negotiators who have been trained in law; legal education, and much of law practice is infused with an adversarial perspective, which I have previously called the "Lawyer's Standard Philosophical Map" (LSPM):

On the lawyer's standard philosophical map ... the client's situation is seen atomistically; many links are not printed. The duty to represent the client zealously within the bounds of the law discourages concern with both the opponents' situation and the overall social effect of a given result.

Moreover, on the lawyer's standard philosophical map, quantities are bright and large while qualities appear dimly or not at all. When one party wins, in this vision, usually the other party loses, and, most often, the victory is reduced to a money judgment. This "reduction" of nonmaterial values—such as honor, respect, dignity, security and love—to amounts of money, can have one of two effects. In some cases, these values are excluded from the decision-makers' considerations, and thus from the consciousness of the lawyers, as irrelevant. In others, they are present but transmuted into something else—a justification for money damages.... The lawyer's standard world view is based upon a cognitive and rational outlook. Lawyers are trained to put people and events into categories that are legally meaningful, to think in terms of rights and duties established by rules, to focus on acts more than persons. This view requires a strong development of cognitive capabilities, which is often attended by the undercultivation of emotional faculties.⁵

In the negotiation context, the LSPM is expressed in adversarial (as opposed to problem-solving or interest-based) negotiation strategies and tactics. And although most law school courses and CLE programs emphasize problem-solving or interest based approaches to negotiation, in the heat of practice, many lawyers tend to fall back, almost reflexively, on the adversarial. This means, of course, that they sometimes miss opportunities for creating better agreements for their clients and other parties to a dispute, and for gaining as much satisfaction as they might from their work.

In order to make appropriate use of either adversarial or problem-solving strategies and techniques, lawyers need a high degree of awareness about their own habitual reactions, including thoughts, emotions and behaviors—and the distance, discipline, and discernment to decide which of these to follow. But negotiation and mediation instruction—especially that provided to law students and lawyers—does not ordinarily provide such foundational training. Instead, teachers and trainers tend to assume that lawyers and law students already have capabilities of attention and awareness that will enable them not only to understand problem-solving, interest-based approaches but also to implement them, when and as appropriate, in professional practice. Regrettably, this assumption often is invalid.

The next section explains an important method for developing the necessary foundational awareness capacities. In the section after that, I describe a series of specific meditation exercises. The treatment of all the topics in this Chapter is necessarily brief; fuller explanations are available in the sources cited in the endnotes.

A Potential Solution: Mindfulness in Practice and Mindfulness Meditation

Mindfulness, as I use the term, means being aware, moment to moment, without judgment, of one's bodily sensations, thoughts, emotions, and consciousness.⁶ It is a systematic strategy for paying attention and for investigating one's own mind, a skill that one cultivates through meditation and then deploys in daily life. The meditation practice begins with developing concentration, usually by focusing on the breath. Next, the mediator learns to direct his attention, one step at a time, to bodily sensations, emotions, and thoughts, then works toward "bare attention," a nonjudgmental moment-to-moment awareness of whatever passes through any of the sense organs or the mind. Mindfulness meditation (also known as insight meditation and vipassana meditation) both requires and produces a measure of equanimity, which reinforces the ability to fix attention where we want it to be (for example, on our client).⁷

The practice has a number of other potential benefits that motivate people to participate. It commonly helps people deal better with stress, develop self-understanding (which helps them clarify their own goals and motivations) and understanding of others, and feel compassion and empathy. Recently scientists have found evidence that mindfulness meditation also can produce brain wave activity that is associated with happiness, apparently shifting a person's disposition, not just her mood.⁸ In Buddhist philosophy, mindfulness meditation is an important part of the quest for freedom from the suffering caused by craving and aversion.

It also seems likely to improve performance in virtually any kind of activity; the outcomes it fosters correlate with success in a variety of fields. Daniel Goleman—a psychologist, journalist, and authority on meditation—has articulated the concept of emotional intelligence, which he distinguishes from academic intelligence, the basis for the IQ and most other intelligence tests.⁹ This idea of emotional intelligence entails five basic emotional and social competencies: self-awareness, self-regulation, motivation, empathy, and social skills. Goleman argues, marshaling a great deal of empirical evidence, that emotional intelligence is much more important than academic intelligence in predicting success at virtually any occupation or profession—assuming, of course, an adequate level of academic intelligence. Mindfulness meditation can help develop the first four of these emotional intelligence competencies—self-awareness, self-regulation, motivation, and empathy. These, in turn, are likely to help produce the fifth emotional intelligence competency—social skills.

Although mindfulness meditation derives from ancient practices, in recent years it has found employment in a variety of secular settings. In the U.S., for instance, specialized programs have appeared for medical patients in chronic pain; professional basketball players; journalists; undergraduate, nursing, and medical students; corporate and foundation executives; and the Green Berets. Most important for our purposes, extensive meditation instruction has been offered to lawyers in at least three large law firms (the Boston offices of Hale & Dorr and Nutter, McClennan & Fish and the Minneapolis office of Leonard, Street & Deinard) and to persons who work in the criminal justice system. A variety of programs—ranging widely in length, intensity, and scope—have been offered to law students at Cardozo, Columbia, Connecticut, CUNY, Denver, Hamline, Harvard, Hastings, Miami, Missouri-Columbia, North Carolina, Stanford, Suffolk, and Yale. Mindfulness meditation also has been a central focus of many programs for law-

yers across the U.S., ranging from five-day retreats to brief introductory sessions, some of which have carried CLE credit. In recent years, mindfulness meditation has appeared in a variety of programs in connection with teaching mediation, negotiation and other lawyering skills at a number of universities, including Harvard Law School,¹⁰ Northwestern University, the University of Missouri-Columbia School of Law, Pepperdine University School of Law and the University of Texas School of Law.¹¹ These efforts have had a range of focuses, including managing stress, developing spirituality, clarifying motivations, or enhancing skills in law school, law practice, or law teaching.

Mindfulness can help negotiators and lawyers in several ways. As mentioned, it provides methods for calming the mind, concentrating, experiencing compassion and empathy, and achieving an awareness of, and “distance” from, thoughts, emotions, and habitual impulses that can interfere with making good judgments and with building rapport and motivating others. All of these outcomes can help negotiators and lawyers make appropriate strategic decisions, moment to moment. In a negotiation, for instance, when our counterpart issues a threat and we feel an impulse to retaliate, mindfulness helps us to insert a “wedge of awareness,”¹² which allows us to examine that impulse and decide whether retaliation is more appropriate than another move that would more likely foster value creation, understanding, or healing. In addition, there is evidence that a positive mood enhances performance in problem-solving negotiation.¹³ And it seems reasonable to suspect that mindfulness could help negotiators be more aware of certain deep assumptions, including those based on ethnicity or culture, and of psychological processes that can interfere with wise decision-making, such as reactive devaluation, optimistic overconfidence, risk aversion, and anchoring. [Korobkin & Guthrie, *Heuristics*; Caton Campbell & Docherty, *Framing*; Goh, *Errors*; Kelly, *Indigenous Experience*; Morash, *Nonevents*; Yarn & Jones, *Biology*; and Shestowsky, *Persuasion*]

Building the Foundation: Meditation Practices

Mindfulness means being aware of, moment to moment and without judgment, whatever passes through the senses and the mind—sounds, sights, smells, other bodily sensations, emotions, and thoughts and images. We aspire to be *aware* that we are hearing while we are hearing; to be aware that we are thinking while we are thinking, and so forth. With such non-judgmental awareness, we gain a kind of freedom. For instance, if, while we are interviewing a client, we become aware that our mind has wandered off to thoughts about next week’s football game, we can swiftly bring our attention back to the client. If we become aware of an impulse to get away from our client—manifested, for instance, by feelings of aversion, anxiety or fear and accompanying bodily sensations—we can make a discerning judgment about whether to follow that impulse in light of the circumstances and our obligations as a lawyer.

We cultivate mindfulness through a progression of meditative practices. The most basic of these practices is concentration on the breath. From there we move to bodily sensations, thoughts, emotions, and finally, to choiceless awareness or bare attention, a non-judgmental awareness of whatever arises through any of the sense organs or the mind.¹⁴

As indicated below, it is helpful to have support for your meditation practice, including individual and group educational activities. However, to give you a sense of meditative practices and an opportunity to practice on your own, I set forth below a series of instructions for the following meditations:

- Awareness of Breath
- Awareness of Bodily Sensations
- Awareness of Thoughts
- Awareness of Emotions
- (Almost) Choiceless Awareness

Awareness of Breath

Basic Meditation on the Breath

Sit comfortably with your back and neck erect—either on a chair with your feet flat on the floor, or on a meditation cushion on the floor with your legs crossed—and your hands on your knees or your thighs.¹⁵ Begin to settle yourself by bringing attention to sound. As best you can, observe sounds as they arise, stay present, and fall away, and do this without worrying about the cause of each sound and without judging the sounds. However, if thoughts about the source of sounds and judgments arise, simply notice them, and return the attention to sound.

After a few minutes, bring your attention to the sensation of your breath at the place where it is easiest for you to notice. This might be at the nostrils, as the air enters and leaves, or in the chest or abdomen, as they rise and fall with inhalations and exhalations. Focus on the sensations of one inhalation at a time, one exhalation at a time. When you notice that your mind has wandered, this is a moment of mindfulness! Gently escort your attention back to the breath. If you have a lot of trouble concentrating on the breath, you might try one of the following: (1) Silently note “rising” and “falling” or “in” and “out” or “up” and “down” with each breath; or (2) Silently count each exhalation until you reach ten; when you reach 10, or go past 10 or lose count, begin again at one. During such activities, the words should be in the background, the sensations in the foreground.

The first time you do this meditation, try it for five minutes. As you become comfortable with it, extend the practice to 15 minutes or more, ideally twice a day. Notice, without judgment, how the mind wanders, and its propensity to latch on to—get carried away with—thoughts, feelings, and sensations.

Extended Meditation on the Breath

When you become comfortable with the Basic Meditation on the breath—which could be a matter of days, weeks, or months—you may want to move to a more extended version of the breath meditation.

Begin with the Basic Meditation on the Breath, as described in the preceding instructions. This time, when you become aware that the mind has wandered, notice where it has gone. Become aware of whether it is in the past or future, and its focus, e.g. on thoughts, bodily sensations, emotions; notice its impermanence, and then gently return the attention to the breath.

Comment on Breath Meditation

These meditations on the breath tend to create a calm state of mind that enables one to perceive and think more clearly. The difference between the Basic and the Extended Awareness of Breath Meditations is what you do when your mind wanders. In the Basic method, when you notice that the mind has wandered from the breath, you simply bring the attention back to the breath; in other words, you are trying to ignore any distractions so that you can be “absorbed” in the breath. In the Extended form, when you observe that the attention has wandered from the breath, you notice where it has gone—momentarily concentrating on that—and

then bring the attention back to the breath. This subtle distinction will be clearer after you practice a bit.

How long should you practice? As a general matter, you will get more benefit from more practice. I suggest starting with fifteen minutes twice each day, and gradually increasing the time up to 30 and then 45 minutes. It is especially important to practice every day, even if it is for a very short time.

Meditation on the Body—The Body Scan

It is best to do this for 30-45 minutes, but shorter times can work as well. (I am not suggesting that you do this immediately after the extensive meditation on the breath that I described above. It is more of an alternative to the mindfulness of breath practice, and, as you will see, incorporates elements of that practice). Get into a comfortable position. The ideal position for the body scan is lying on your back on a yoga mat or blanket or soft carpeting, with your feet hanging loosely to the side, arms by your side, and hands palm-up. Sitting in a chair also works, and lessens the chance of falling asleep.

Begin meditating on the breath, as described above. After about three minutes, on an out breath, move the awareness from the breath down the left side of the body to the toes on the left foot. Notice any sensations in the toes—on the skin, in the muscles. If you observe no sensations at all in the toes, that is o.k. After a few moments, on an out breath, move your attention to the bottom of the foot. Gradually, in this manner, move your attention systematically throughout the body, moving, more or less, as follows, noticing, as best you can, any sensations on the skin, in the muscles, in the joints:

- the left ankle, calf, knee, thigh, buttock;
- the right toes, foot, ankle, calf, knee, thigh, buttock;
- the genital area;
- the abdominal area, chest, upper back;
- shoulders, lower back;
- the left upper arm, elbow, lower arm, hand, fingers and thumb (as best you can, moving the attention from one digit to another);
- the right upper arm, elbow, lower arm, hand, fingers and thumb (one digit at a time);
- the neck, front, sides and back;
- the cheeks, chin, lips, mouth (roof, floor, sides, tongue, teeth), eyes, eye lids, ears;
- the head—sides, back, top;
- the entire body, noticing any sensations on the skin, in the tissue, in the bones and joints, as they arise in any part of the body.

As you are moving the attention through the body, here are a few suggestions:

- The attitude here is non-judgmental curiosity. You are trying to observe what's going on in the body, not to judge it. If, however, it turns out that the mind is judging—e.g. if the thought arises, "I wish my hair were thicker"—simply observe that thought, and don't judge yourself harshly for having such a thought, rather than simply observing the scalp.
- You may find it helpful to imagine that you are breathing into and out of the part of the body on which you are focusing.
- When you notice that the mind has wandered away from the part of the body on which you are focusing, that is a moment of mindfulness; simply return the attention to that part of the body.¹⁶

- If, however, the attention is distracted by a very strong unpleasant sensation, such as a pain or an itch, instead of drawing the attention back to the part of the body on which you are focusing, simply focus on the unpleasant sensation. As best you can, observe it without judgment. But as judgment arises, notice that, too. Observe the changing nature of the physical sensation, and notice the thoughts associated with it. Usually such thoughts relate to wishing the sensation would go away. In this sense, there is a distinction between pain—the physical sensation—and suffering—wishing things were other than the way they are.
- Use the breath as a source of stability. In the same way that a swimmer may occasionally return for temporary support to the side of the pool or a pier in a lake, when you lose track or get stuck in any sounds, bodily sensations or feelings, bring the attention momentarily to the breath, until the attention feels stable enough to return the part of the body on which you are focusing.

Awareness of Thoughts Meditation

To prepare for Awareness of Thoughts Meditation, begin with a brief Extended Awareness of the Breath Meditation, as described above. Once the mind is relatively settled, bring the attention to thoughts and thinking. The idea is to become aware, without judgment, of thoughts as they arise, stay present, and drop out of awareness. For most people, this is more challenging than being aware of the breath and bodily sensations. For that reason, you may find it helpful to silently “label” thoughts as they arise. For instance, you might say, “thinking” when you notice a thought arise.

The main idea here is to be *aware* that you are thinking *while* you are thinking, and to have enough distance from the thinking that you can decide whether that’s what you want your mind to be doing.

This meditation is particularly useful in helping us learn to deal with distracting thoughts. In addition, it gives us the opportunity to notice that we have almost no control over what thoughts arise, though we do have choices over how we respond to them. If we have enough presence of mind to be aware of thoughts as they arise, we also have a chance to assess their validity¹⁷ and appreciate the saying, “Don’t believe everything you think.”

Awareness of Emotions

Prepare for this by meditating on the breath and then doing a brief (say, two-minute) body scan. Once the mind is settled, open the awareness to emotions. Try to notice—again, without judgment—feelings such as fear, sadness, joy, love, revulsion, anxiety. Once again the appropriate attitude is curiosity, mingled with a compassion for self. If you observe carefully, you will see that what we think of as an emotion is closely connected to thoughts and bodily sensations. You may find it helpful to silently label the emotions that you recognize. As in all the meditations in this sequence, you may find it useful to use the breath as a source of stability, returning to it whenever you lose track of where your attention is or should be or when you need a “rest.”

(Almost) Choiceless Awareness

Prepare for this by meditating on the breath and then doing a brief body scan. Once the mind is settled, open the awareness to all of the objects that we addressed in the previously-described meditations—sounds, the breath, bodily

sensations (this includes sounds and the breath as well as smells), thoughts, and emotions. To help you pay attention, here are a few suggestions. Once again, use the breath as a source of stability.¹⁸ It may be helpful for you to keep in mind categories of experiences and to label experiences accordingly. One device is to focus on the “triangle of awareness”—thoughts, emotions, sensations.¹⁹ It may help you to label your experiences in terms of these three categories and to notice any relationships among them.²⁰

Reinforcing the Foundation: Bringing Mindfulness into Daily Life and Negotiation Activities

Meditation is the key to building the foundation for states of concentration and mindfulness. But the impact of meditation can be increased dramatically through regular practice and a variety of supporting activities. These include developing a daily meditation practice; sitting regularly with a group; attending meditation retreats, lectures and workshops—including those that seek to apply mindfulness to negotiation, mediation and law practice; reading about meditation practices; keeping a journal of your meditation experiences and insights; and engaging in other mindfulness-related activities, such as certain forms of yoga, T'ai Chi, and Qi Gong.

Preparing for Activities

I find it very useful to use meditative practices to prepare for various challenging activities, and for transitions between ordinary activities.

In preparing for activities you expect to be challenging, the most appropriate meditative practice to use might vary with your current state of mind and the nature of the prospective activity. Your level of experience with various meditative practices also might have an impact. Here are a few suggestive examples:

Before a Negotiation or a Mediation

A meditation on the breath or on bodily sensations could help calm the mind and body. As you feel more calm, and depending upon your level of experience and comfort with the other meditations, you may wish to extend your focus to thoughts and emotions, and even to the practice of (almost) bare attention. Such awareness could give you insight into particular issues or concerns that might be bothering you. In negotiations, for example, as Roger Fisher and Daniel Shapiro put it, most people have the same “core concerns”: appreciation, affiliation, autonomy, status and role.²¹ [Shapiro, *Emotions*] Any of these could manifest in thoughts, emotions, and sensations. And, of course, any of these could get in the way of your mindful attention to the task at hand. However, if you can muster moment-to-moment awareness and equanimity about concerns you are experiencing—say a sense of threat to your status—that, in itself, could diminish the power of such concern, and allow you to maintain the appropriate focus. Similarly, such non-judgmental awareness may give you reason to suspect that your negotiation counterpart has similar concerns, and give you the presence of mind to address them. Such meditations also will heighten your general level of awareness, enhancing the likelihood that you will be able to maintain a mindful awareness in the midst of the negotiation.

Antipathy Toward Others

If you are feeling antipathy toward any of the parties or lawyers or insecure about their attitudes toward you, there are a number of steps you can take.

Meditate on the Breath, Body, Emotions, Thoughts. The same meditations as described above may be useful, as they tend to give you some insight about your own thoughts and emotions and to develop empathy as well as compassion for yourself and others. In addition, there are other meditations that are specifically intended to develop positive emotions, such as loving kindness.²²

Meditate on Your Intentions. It can be very illuminating to observe thoughts and intentions as they arise and to make a discerning choice about whether to actually carry them out. You may notice, for example, negative thoughts about your negotiation counterpart—or about yourself. You also may notice thoughts or impulses about how to negotiate—e.g., to follow adversarial strategies or problem-solving strategies. The mindful, non-judgmental awareness of such thoughts and impulses can allow you to examine them and make a discerning choice about whether and how to follow them. In other words, the non-judgmental awareness provides a degree of freedom from impulsive and habitual patterns of behavior.

Carrying Out Activities

Building the foundation (through a regular meditation practice and related supporting activities) and meditating before particularly challenging events will enhance the likelihood that you will be able to be mindful in everyday life. Such a foundation improves your alertness and skill at noticing when you are *not* mindful—e.g., when you are distracted by strong emotions, self-centered thoughts or other cognitive processes, or strong sensations in the body—and in being able to return your attention to the task at hand. The real challenge to being mindful is in *remembering* to be mindful. Here are a few suggestions for bringing mindful awareness to routine activities of everyday life and particularly challenging professional situations.

Find a Few Routine Activities to do Mindfully

Activities such as walking, waiting for an elevator or a green traffic light, doing the dishes, or answering the phone, as well as transitions between activities, can make good reminders. You could even choose something that you find irritating, maybe a truck horn or alarm.

Drop Your Attention to Your Breath and to Bodily Sensations

When you are feeling agitated, say, during a negotiation, such a shift in focus to awareness can have a calming effect that can enable you to think more clearly. Even when you are not feeling agitated, periodically shifting to such a focus can calm the mind and free you from the constraining effects of strong emotions that might otherwise impair your judgment.

Try the “STOP” Technique

This simple technique, developed and taught by the Stress Reduction Clinic at the University of Massachusetts Medical School, includes the following steps:

- Stop whatever you are doing or thinking
- Take a breath
- Observe and open to the breath, bodily sensations, and emotions. Also observe and open to all the senses and the external environment.
- Proceed.²³

Notice Distractions to Listening, and Keep Listening

While you are listening to someone speak—in a negotiation, an interview, a conversation, a class—try to really pay attention. To do that you may have to notice when you are *not* listening—e.g., when the mind is distracted by emotions, discursive thought, thinking about what *you* will say next, worries, bodily sensations, desires—and to bring your attention back to the speaker. Also notice any impulses to interrupt the speaker—because of impatience, because you think you know what the speaker will say next, because you have a need to say something—and try resisting that temptation. Use silence, and notice your and the other person's reactions to silence.

Mentally Send Good Wishes to Others

Try sending good wishes to others, mentally. The others could include people you pass on the street, friends, enemies, and the lawyers and clients on the other side of your cases. Observe any resistance you feel to doing this as well as your reactions.

Reflecting Upon or Reviewing Activities

It is especially useful to practice mindfulness meditation during a break or shortly after completing a significant activity, such as a negotiation, for two reasons: first, it can help you in the transition, to decompress or detach, so that you can be present for whatever happens next. Second, sometimes—even if you try to focus on the present moment—your mind will automatically generate insights about what happened or about why you or others did what they did. You may get ideas about what to do next or how to undo mistakes.

In addition to mindfulness practice at such points, some people find it helpful to deliberately reflect on the negotiation activity, calling to mind any discomfort, unease or difficulty that might keep them from being more present.²⁴ This can produce lots of insight.

Conclusion

I hope this has piqued your interest in knowing more about how awareness skills can help you feel and perform better as a negotiator. In one sense, being mindful is the easiest task in the world. All you need to do is pay attention, and you can do that right now. In another sense, it is the hardest job you will ever undertake. The simplest meditations, such as meditating on the breath, require determination and alertness, so you can know, in each moment, where your mind is. But the effort will be rewarded, and not only in our professional lives. Mindfulness also can help us take part more fully in life, our own and others'.

Endnotes

This draws upon and extends my previous writings on this topic, which present more detail on some of the ideas that appear in this Chapter. LEONARD L. RISKIN, AWARENESS IN LAWYERING: A PRIMER ON PAYING ATTENTION IN THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (Marjorie Silver ed., forthcoming 2006); Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 JOURNAL OF LEGAL EDUCATION 79 (2004); Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Benefits of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARVARD NEGOTIATION LAW REVIEW 1 (2002); Leonard L. Riskin, *Paying Attention in Law: The Role of Mindfulness Medita-*

tion, in *HEALING AND THE LAW* (David Link & Thomas Shaffer eds., forthcoming 2006). Special thanks to Chris Honeyman & Andrea Schneider for “coaxing” this chapter into being.

¹ ELLEN J. LANGER, *MINDFULNESS* 9 (1983).

² *Id.* at 11-12.

³ *Id.* at 12-16.

⁴ *Id.* at 16-18.

⁵ Leonard L. Riskin, *Mediation and Lawyers*, 43 *OHIO STATE LAW JOURNAL* 44-45 (1982). Other limiting mind-sets also contribute to the problems I describe. See, e.g., ROBERT H. MNOOKIN, ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 9-91 (2000) (describing limiting mind-sets associated with client counseling and negotiation).

⁶ See JON KABAT-ZINN, *FULL CATASTROPHE LIVING* (1991); JOSEPH GOLDSTEIN, *INSIGHT MEDITATION: THE PRACTICE OF FREEDOM* (1994).

⁷ For distinctions between mindfulness and other forms of meditation, see Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 *JOURNAL OF LEGAL EDUCATION* 79, 83-84 n. 25 (2004).

⁸ Richard J. Davidson, et al., *Alterations in Brain and Immune Function Produced by Mindfulness Meditation*, 65 *PSYCHOSOMATIC MEDICINE* 564 (2003). Davidson and his colleagues found that mediators had increased levels of brainwave activity in the left prefrontal cortex (which is known to correlate with the experience of happiness) and decreased activity in the right prefrontal cortex. High activity in the right prefrontal cortex is associated with the experiences of stress and anger. See also, Daniel Goldman, *Finding Happiness: Cajole Your Brain to Lean to the Left*, *N. Y. TIMES*, Feb. 4, 2003, at F5.

⁹ DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* (1995).

¹⁰ See HARVARD NEGOTIATION INSIGHT INITIATIVE, http://www.pon.harvard.edu/research/projects/b_drp.php3.

¹¹ See INITIATIVE ON MINDFULNESS IN LAW AND DISPUTE RESOLUTION, <http://www.law.missouri.edu/csdr/programs/mindfulness>; THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY’S LAW PROGRAM, <http://www.contemplativemind.org/programs/law/about.html>; and HARVARD NEGOTIATION INSIGHT INITIATIVE, <http://www.pon.harvard.edu/hnii>.

¹² MATTHEW FLICKSTEIN, *SWALLOWING THE RIVER GANGES: A PRACTICE GUIDE TO THE PATH OF PURIFICATION* 28 (2001).

¹³ See MARTIN E. P. SELIGMAN, *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment* 39 (2002). For a more critical—and pessimistic—discussion, see Scott Peppet, *Mindfulness in the Law and ADR: Can Saints Negotiate? A Brief Introduction to the Problems of Perfect Ethics in Bargaining*, 7 *HARVARD NEGOTIATION LAW REVIEW* 83 (2002); See also, Van M. Pounds, *Promoting Truthfulness in Negotiations: A Mindful Approach*, 40 *WILLAMETTE LAW REVIEW* 181 (2004); MAX H. BAZERMAN & MARGARET A. NEALE, *NEGOTIATING RATIONALLY* 121-22 (1992) (asserting that negotiators in a good mood may be more vulnerable to certain psychological traps, which are known as the framing, escalation of commitment, and availability effects).

¹⁴ Different teachers present these practices in different ways and in various orders and combinations. The meditation instructions that follow are based on my own experience as a student and teacher of meditation. They draw on numerous sources, many of which I can no longer identify. For other instructions and a sense of the variety of practices, See generally JOSEPH GOLDSTEIN, *THE EXPERIENCE OF INSIGHT* (1987); VENERABLE HENEPOLA GUNARATANA, *MINDFULNESS IN PLAIN ENGLISH* (2002); KABAT-ZINN, *supra* note 6; JON KABAT-ZINN, *WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE* (2005); JACK KORNFIELD, *A PATH WITH HEART: A GUIDE TO THE PROMISES AND PERILS OF SPIRITUAL LIFE* (1993); *BREATH SWEEPS MIND: A FIRST GUIDE TO MEDITATION PRACTICE* (Jean Smith ed., 1998).

¹⁵ Meditation traditionally has been done sitting, standing or lying down. In addition there are various forms of walking meditation, which are particularly useful in bringing mindfulness into daily life. For further information on walking meditation, which means being

present while walking, *See* GOLDSTEIN, *supra* note 6, at 136-37; FLICKSTEIN, *supra* note 12, at 78-82.

¹⁶ When you become familiar with the body scan, e.g., after you have done it several times, you might address distractions by using the "triangle of awareness"—thoughts, bodily sensations, and emotions (an idea developed at the Stress Reduction Clinic at the University of Massachusetts Medical School and used in its teaching programs). For example, when you notice that the mind is distracted by thinking, try also to observe any bodily sensations and emotions that accompany the thoughts.

¹⁷ For an example of how to use this ability to deal with "offensive" comments in a negotiation, *see* Andrea Kupfer Schneider, *Effective Responses to Offensive Comments*, 10 NEGOTIATION JOURNAL 107 (1994).

¹⁸ I call this "(Almost)" Choiceless Awareness, because in Choiceless Awareness (a.k.a. Bare Attention) one does not choose to focus on the breath, or anything else.

¹⁹ *See supra* note 16.

²⁰ As you may notice, the three factors often are deeply interrelated. Each can cause either of the others.

²¹ *See* ROGER FISHER & DANIEL SHAPIRO, *BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE* (2005).

²² *See* SHARON SALZBURG, *LOVING-KINDNESS: THE REVOLUTIONARY ART OF HAPPINESS* (1997); Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL* (Marjorie Silver ed., forthcoming 2006).

²³ For a more extended version of this technique, *see* ZINDEL SEGAL, ET AL., *MINDFULNESS-BASED COGNITIVE THERAPY FOR DEPRESSION: A NEW APPROACH TO PREVENTING RELAPSE* 173-75 (2002).

²⁴ I am indebted to Daniel Bowling and Rachel Wohl for this idea.