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### The M Word

Tamara L. Kuennen

*University of Denver*, [tkuennen@law.du.edu](mailto:tkuennen@law.du.edu)

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## THE M WORD

*Tamara L. Kuennen\**

### I. INTRODUCTION

The push to incorporate mindfulness into the practice of law is gaining traction. Defined as “paying attention, on purpose, to the present moment, non-judgmentally,” mindfulness can be both a state of being (a reaction to a given situation or moment in time as a calm observer of what is happening within it) as well as a trait of being (a larger approach to all of life’s moments; a perspective).<sup>1</sup> This Idea more fully defines mindfulness and its value to the practice and teaching of law, and it shows how clinical law professors in particular have embraced mindfulness as a core pedagogical value.<sup>2</sup>

This Idea also observes, however, that although mindfulness has been embraced, meditation—what I am calling the “M” word—has not. A primary way to achieve mindfulness is through meditation, the focused practice of paying attention to one’s mind and the thoughts that occur to it in any given moment.<sup>3</sup> Unlike mindfulness, the word meditation rarely appears in pedagogical scholarship, and only a handful of clinicians are teaching it. The M word appears to carry baggage—a “touchy-feely” stigma of some sort—that mindfulness does not.

This Idea demonstrates that mindfulness and meditation are but two sides of a coin. Meditation, when defined most simply, is nothing more than a practice of mindfulness. This Idea ultimately concludes that mindfulness, meditation, and clinical pedagogy all share as a goal, the development in students (and lawyers) of a cluster of cognitive competencies, often referred to as open-mindedness.<sup>4</sup>

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\* Associate Professor of Law, University of Denver Sturm College of Law.

1. *See infra* Part II.A.

2. *See infra* Parts II.B, III.

3. Evan M. Rock, *Mindfulness Meditation, the Cultivation of Awareness, Mediator Neutrality, and the Possibility of Justice*, 6 CARDOZO J. CONFLICT RESOL. 347, 350-51 (2005).

4. *See infra* Parts III–V.

## II. MINDFULNESS AND THE PRACTICE OF LAW

### A. Working Definition of Mindfulness

Borrowing from the work of Jon Kabat-Zinn, renowned American proponent of mindfulness, I define mindfulness as paying attention, on purpose, to the present moment, non-judgmentally.<sup>5</sup> In theory, this concept is quite straightforward. It basically has to do with paying attention and being aware.<sup>6</sup> However, for most of us, most of the time, it is difficult to put into practice. As Kabat-Zinn describes:

[I]t often seems as if we are preoccupied with the past, with what has already happened, or with a future that hasn't arrived yet . . . [and] we are only partially aware of this inner tension, if we are aware of it at all. What is more, we are also only partially aware at best of exactly what we are doing in and with our lives, and the effects our actions and, more subtly, our thoughts have on what we see and don't see, what we do and don't do. For instance, we usually fall, quite unawares, into assuming that what we are thinking—the ideas and opinions that we harbor at any given time—are “the truth” about what is “out there” in the world and “in here” in our minds. Most of the time, it just isn't so. We pay a high price for this mistaken and unexamined assumption . . . . The fallout accumulates silently, coloring our lives without our knowing it or being able to do something about it.<sup>7</sup>

Mindfulness involves both observing one's thoughts and understanding that one's thoughts are not truths, but merely assumptions. This awareness is the essence of mindfulness; it is the awareness that when thoughts go unexamined, they cannot be trusted. Kabat-Zinn stated that: “[Mindfulness] is enlightening in that it literally allows us to see more clearly, and therefore come to understand more deeply . . . .”<sup>8</sup> This awareness extends to emotions—deep emotions that we might not otherwise allow ourselves to hold in awareness. Kabat-Zinn found that

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5. JON KABAT-ZINN, *WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE* 4 (1994).

6. See Rock, *supra* note 3, at 350-51. Though mindfulness is an ancient Buddhist practice, for the purposes of this Idea, I am concerned with it as a habit of mind, regardless of the practitioner's religious or spiritual beliefs, or lack thereof. Douglas Codiga stated that: “[L]awyers must understand that there is nothing mystical or otherworldly about mindfulness meditation. Both the theory and practice of mindfulness meditation are founded on, and compatible with, reason, analysis, and skepticism . . . . Second, it must be clear that the practice of mindfulness meditation requires no commitment to Buddhism.” Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOT. L. REV. 109, 109-10 (2002).

7. KABAT-ZINN, *supra* note 5, at xiv; see also Leonard L. Riskin, *Further Beyond Reason: Emotions, the Core Concerns, and Mindfulness in Negotiation*, 10 NEV. L.J. 289, 305 (2010).

8. KABAT-ZINN, *supra* note 5, at 8.

“[t]he overall tenor of mindfulness . . . is gentle, appreciative and nurturing,” and that another way to think about mindfulness, then, is to think of “heartfulness.”<sup>9</sup>

Yet, a larger dimension of mindfulness is the sense of being “aware that I am aware.”<sup>10</sup> This larger sense is critical to understanding that mindfulness is not merely a habit of mind for use in this moment—though certainly it encompasses this—but also that mindfulness can be less of a state, and more of a trait, of being.<sup>11</sup>

### B. Mindfulness and Lawyers

The idea that we might develop the trait of mindfulness, rather than deploy it sporadically, is one that appeals to those who are concerned with lawyering as a profession.<sup>12</sup> Lawyers could operate from a “meditative perspective,” a term coined by the Center for Contemplative Mind in Society’s Law Program’s Working Group for Lawyers (“Working Group”).<sup>13</sup> Specifically, with regard to how mindfulness benefits lawyers, the Working Group defines the meditative perspective as “a method to remain grounded and centered amidst the often contentious and stressful nature of the legal profession.”<sup>14</sup> Moreover, they assert that “[w]ith practice over time, mindfulness meditation fosters a more profound relationship with our thoughts, emotions, and, ultimately, ourselves.”<sup>15</sup>

The Working Group found that the meditative perspective permitted the deep and difficult leap to understanding our clients’ experiences to build trust with clients and to make connections that cross barriers of class, education, and culture.<sup>16</sup> In addition, it offers the possibility of seeing oneself and others (clients, judges, and adversaries)

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9. *Id.* at 6-7.

10. DANIEL J. SIEGEL, *THE MINDFUL BRAIN: REFLECTION AND ATTUNEMENT IN THE CULTIVATION OF WELL-BEING* 13 (2007).

11. Riskin, *supra* note 7, at 314-15, 330. I note, however, that in my personal experience, “mindfulness” is not a “trait” in any inherent sense. It is a result of practice, much like physical exercise. One builds upon it. Once practiced as a skill, it becomes more trait-like. And of course, when one does not practice the skill, it no longer resembles a trait.

12. See Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 *UMKC L. REV.* 535, 555 (2011).

13. The Center for Contemplative Mind in Society, *The Meditative Perspective 1* (April 2007) (working draft) (on file with the *Hofstra Law Review*) [hereinafter *The Meditative Perspective*] (“The radical change mindfulness mediation can foster is difficult to describe and inseparable from the practice itself; we call it ‘the meditative perspective.’”); see Magee, *supra* note 12, at 546 (describing the Center for Contemplative Mind in Society’s Law Program).

14. *The Meditative Perspective*, *supra* note 13, at 1.

15. *Id.*

16. *Id.* at 2-3.

with the same clarity and acceptance, which has revolutionary implications for the practice of law.<sup>17</sup>

There is a burgeoning literature documenting the benefits of mindfulness for lawyers.<sup>18</sup> The benefits include not merely stress reduction—though this is an enormous benefit in a field in which practitioners report a very high level of stress—but also a sense of feeling whole and of consciously connecting the lawyer’s professional role to her personal identity. Mindfulness has helped lawyers bridge the gap between the outer world (the demands of lawyering) with the inner world of intuition, beliefs, and emotions, thereby striking an integrated balance between the two.<sup>19</sup>

### C. Legal Education

The notion of integrating personal and professional roles has been explicitly found to be lacking in legal education—in particular, legal educators are currently being scrutinized for failing to develop ways of “thinking within and about the role of lawyers” into their curricula for students, and how this role both overlaps with, but is distinct from, one’s self-concept.<sup>20</sup> In law school, students quickly learn that rational objective analysis, hard facts, and cold logic are valued to the exclusion of other qualities, such as self-awareness, emotion, imagination, morality, and interpersonal relationships.<sup>21</sup>

Though teaching self-reflection is a hallmark of clinical legal education,<sup>22</sup> it is not a skill that is explicitly taught in the general

17. *Id.* at 2; *see, e.g.*, Charles Halpern, *The Mindful Lawyer: Why Contemporary Lawyers Are Practicing Meditation*, 61 J. LEGAL EDUC. 641, 643-44 (2011) (discussing, as an attorney, his experience using the group’s “meditative perspective”). Indeed, Charles Halpern and a few other pioneering scholars offer meditation seminars at law schools and annual meditation retreats and workshops for judges and lawyers. Halpern, *supra*, at 641, 644.

18. *See, e.g.*, STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* 60-63 (2009) (discussing Kabat-Zinn’s mindfulness and its application to the practice of law).

19. *Id.* at 12 (“The challenge to the profession is to honor both the life of the spirit and the life of the mind, and thereby extend the professional map.”).

20. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* 14-15, 21-23 (2007).

21. *Id.* at 22; *see* KEEVA, *supra* note 18, at 7 (“In no time flat, intellectual rigor has become [law students’] true north, and a mountain of reason has replaced their old landscapes of feelings, convictions, and beliefs.”); Riskin, *supra* note 7, at 292-94 (arguing that lawyers require certain skills to handle conflict—which involves cognitive, behavioral and emotional capabilities—but that “[m]ost traditional law school courses . . . exclude consideration of the emotions of the parties, lawyers, and judges”).

22. STUCKEY ET AL., *supra* note 20, at 48-49, 62, 65-66; WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 28-29 (2007); *see also* Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 13, 38 (2002) (explaining that self-reflection should be nurtured in law school and

curriculum. Recently, a number of critics compellingly argued that teaching students to become expert self-reflectors should be the primary missions of law schools.<sup>23</sup> Given that three years of law school cannot fully prepare students for practice, schools should do everything possible to ensure that their graduates can skillfully identify, plan, monitor, and reflect upon their learning strategies.<sup>24</sup>

Students must be taught to be reflective about more than just their learning styles; they should be able to reflect upon their thinking much more broadly. Law schools teach students to “think like lawyers.” Yet learning to think in this new way is hard,<sup>25</sup> and as mentioned above,<sup>26</sup> the traditional law school curriculum fails to teach the importance of feelings and emotions in thinking. Nuanced models of thinking take into account the emotional aspects of intelligence, and view intelligence as a multidimensional concept involving both cognitive and emotional abilities.<sup>27</sup> Acknowledging the multidimensional nature of thinking sets the stage in law school for increased receptivity to the notion of an integrated self-conception that not only legitimizes the role of emotions in professional decision-making and relationships, but can also more

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clinical supervision helps students acquire increased self-awareness about what underlies and shapes their perceptions); Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 290, 298-99 (2001) (describing the importance of critical reflection, which is the “ability to identify assumptions and expose them”); Jane H. Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLINICAL L. REV. 1, 24-26, 42 (1997) [hereinafter Aiken, *Striving*] (explaining that clinicians can help students reflect on why disorienting moments are disorienting while “reorient[ing]” their thinking); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 56-57 (2001) (emphasizing that the ability to reflect and self-monitor are necessary for dealing with and learning from cross-cultural difficulties and mistakes and arguing that “[s]tudents with a capacity to talk about issues of difference will be better able to reflect with and learn from others”); Michael Meltsner & Philip G. Schrag, *Scenes from a Clinic...*, 127 U. PA. L. REV. 1, 9 (1978) (describing how “learning about learning” is an important goal).

23. See, e.g., STUCKEY ET AL., *supra* note 20, at 48-49; Aiken, *Striving*, *supra* note 22, at 6, 25-26.

24. STUCKEY ET AL., *supra* note 20, at 49-50.

25. JANET DONALD, *LEARNING TO THINK: DISCIPLINARY PERSPECTIVES* 195 (2002). Janet Donald stated:

Learning to think like a lawyer is a demanding and complex process. A vocabulary of abstract, nuanced terms and principles guide the process of thinking. The methodology of legal judgment consists of looking at the facts, the issues, and the results, analyzing the reasons, and then critiquing these both distinctively and constructively. Lawyers must determine what was held and why. There are various strategies to be learned to produce an argument, and individuals must incorporate a wide range of skills, attitudes, and values into their behavior.

*Id.*

26. See *supra* text accompanying note 20.

27. See, e.g., Patti Alleva & Laura Rovner, *Seeking Integrity: Learning Integratively from Classroom Controversy*, 42 SW. U. L. REV. 355, 391, 417 (2013).

transparently account for their influences, whether positive or negative, in what lawyers say and do.<sup>28</sup>

Put simply, if taught the skill of self-reflection, law students would be able to observe their thought patterns, develop the ability to identify inaccuracies and errors, envision alternative or less inaccurate patterns, and be more aware of otherwise unexamined thoughts. Similarly, they could identify and acknowledge emotion—which so often occurs below the level of consciousness—and develop an understanding of the root causes of varying emotions, and an awareness of how emotions affect both thought and judgment.

As Rhonda V. Magee, law professor and proponent of mindfulness in law school curricula, argues, students would be “capable of acting more purposefully and deliberately, and, over time, have been shown to increase positive feelings toward oneself and compassion toward others.”<sup>29</sup> She further asserts that “[t]hese outcomes directly address the concerns of Carnegie.”<sup>30</sup>

### III. MINDFULNESS AND CLINICAL PEDAGOGY

Clinical law professors have embraced the importance of mindfulness to the practice of law, and, thus, have included mindfulness in their teaching of students to practice law. The 2014 American Association of Law Schools Annual Conference on Clinical Legal Education (“2014 Conference”) devoted a third of its program to the subject of mindfulness.<sup>31</sup> Previous conferences have also included individual sessions devoted to the topic.<sup>32</sup>

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28. See generally Alleva & Rovner, *supra* note 27.

29. Rhonda V. Magee, *Contemplative Practices and the Renewal of Legal Education*, in *NEW DIRECTIONS FOR TEACHING AND LEARNING: CONTEMPLATIVE STUDIES IN HIGHER EDUCATION* 31, 37 (Linda A. Sanders ed., 2013).

30. *Id.*

31. The 2014 Conference, “Becoming a Better Clinician,” offered three tracks from which participants could choose to attend, one of which was “Community Engagement and Mindfulness.” ASS’N OF AM. L. SCH., 37TH ANNUAL CONFERENCE ON CLINICAL LEGAL EDUCATION: BECOMING A BETTER CLINICIAN 5, 30-31 (2014) [hereinafter 37TH ANNUAL CONFERENCE], available at [www.aals.org/clinical2014/Clin14BookletWeb/pdfhttp://bestpracticeslegaled.files.wordpress.com/2014/05/clin14bookletweb.pdf](http://www.aals.org/clinical2014/Clin14BookletWeb/pdfhttp://bestpracticeslegaled.files.wordpress.com/2014/05/clin14bookletweb.pdf).

32. In 2008, “Mindfulness and Clinical Law Teaching” was offered as a concurrent session, as well as daily meditation groups. ASS’N OF AM. L. SCH., 2008 CONFERENCE ON CLINICAL LEGAL EDUCATION 3 (2008). In 2010, a plenary session facilitated by Margaret E. Montoya, Sameer M. Ashar, and Tirien Steinbach was devoted to an exercise in mindfulness designed by Professor Jeff Selbin. See Montoya et al., Plenary II: Using Critical Perspectives to Inform Change at the 2010 Conference on Clinical Legal Education (May 6, 2010).

Clinicians' scholarly works have long focused on the centrality of teaching students to approach clients with an open mind.<sup>33</sup> Stephen Ellmann, Robert D. Dinerstein, Isabelle R. Gunning, Katherine R. Kruse, and Ann C. Shalleck described open mindedness as a "special virtue" that a lawyer must possess:

In every interaction, lawyers need to work to understand the part of clients' experiences that the clients bring to the relationship. As lawyers come to know their clients and grasp their legal problems, they need to be able to listen with care and flexibility, shape insightful questions, offer clear explanations, and convey empathy. They need to encounter and take account of difference and sameness; they need to become part of client decisionmaking without taking [the] choice away from the clients; they need to find ways to feel comfortable taking action for a client when much remains uncertain for the client or about the situation the client faces; they may need to wrestle with profound issues of truth, values, emotions and the nature of law; and ultimately they need to learn to do all of this quickly and efficiently as well. And, as if that were not enough, we are also saying that they need to be sensitive to context, to connection, to the fluidity of client identity, and of course to ethics.

To do all this, the lawyer needs a special virtue—openness of mind.<sup>34</sup>

Ellmann et al. describe openness of mind as being comprised of several skills: an ability to approach the client without preconception; a willingness to be curious about and gather information from a client (rather than jumping quickly to a conclusion); and a flexibility of thinking that allows room for any initial understanding of a client to change at different points in time.<sup>35</sup> In addition, the open-minded lawyer must be able to maintain a sense of humility in her approach to clients

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33. See, e.g., Angela Harris et al., *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in the Neoliberal Age*, 95 CALIF. L. REV. 2073, 2094-97, 2115-16, 2126-27 (2007); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 952-53, 958-59 (1992); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 544-45 (1988).

34. STEPHEN ELLMANN ET AL., *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 16 (2009).

35. *Id.* at 16-17. The authors posit:

[L]ook[ing] at the lawyers in these pages . . . ask yourself if they display openness of mind. Are they able to focus on their clients, or are they tripped up by preconceptions or attachments of their own? Are they able to accept their clients not just as the clients first present themselves, but in the different ways the clients may express themselves over time? Are they, the lawyers, able to change too—to reassess a client, a case, or a course of action?

*Id.*

and cases that must last over time, lest she fall prey to the danger of drawing quick conclusions.<sup>36</sup>

In a seminal article, Susan Bryant, collaborating with Jean Koh Peters, explained a methodology for fostering effective cross-cultural relations between student and client.<sup>37</sup> Since that article's introduction to clinical pedagogy more than a decade ago, nearly every law school clinic has recognized the potential success of incorporating "cross-cultural competence"<sup>38</sup> as an essential component of its curriculum. It is axiomatic that, in the heterogeneous environment in which students will practice, "differences" such as race, class, gender, national origin, immigration status, and sexual orientation affect not only individual lawyer-client relationships, but also continue to have significance for the broader allocation of legal benefits and burdens in our society.

The general consensus among educators, however, is that in order to develop cross-cultural competence, students must also develop a sense of cultural self-awareness. They must be willing to explore the dimensions of the cultural lens through which they perceive and interact with the rest of the world if they are to effectively deconstruct the lens of another. The ultimate goal is for students to master the concept of "isomorphic attribution"—the capability to attribute the same meaning to behavior and words that the person who is communicating intended to convey—rather than to interpret a given behavior or words through the listener's own cultural lens.<sup>39</sup>

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36. *Id.* at 17. The authors' question: as lawyers become experts at interviewing and counseling, do they maintain a sense of humility and interest in others that help them meet their clients with eyes and mind open, or do "they become prey to the danger of jumping too quickly to appraisals that, however expert, are wrong in their judgments about the case and client[?]" *Id.*

37. Bryant, *supra* note 22, at 40-41. Espoused as a process through which lawyers can increase their own cultural competency, the "Five Habits" include: (1) identifying areas of similarity and difference between lawyer and client (and reflecting on their potential significance for the relationship); (2) identifying areas of similarity and difference between the client and legal system and between the attorney and legal system; (3) brainstorming multiple alternative explanations for client conduct; (4) anticipating and planning for potentially problematic aspects of cross-cultural communication; and (5) becoming non-judgmentally aware of one's own biases and stereotypes and learning to detect and minimize their impact on interactions. *Id.* at 64-78.

38. See, e.g., Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISC. 140, 146 (2014). Within clinical legal education, the concept of "cross-cultural competence" has its origins in the "client-centered" approach to lawyering. Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 401-02 (1997). Spurred by the recognition that the traditional notions of client-centeredness did not expressly account for those ethnic, racial, socio-economic, and gender-based variables (among others) which necessarily influence the lawyer-client relationship, theorists and practitioners began in the late 1990s to urge lawyers and educators to explore the impact of their own cultures on their interactions with, and their representation of, clients. See *id.* at 349-50, 361, 401-02.

39. Bryant, *supra* note 22, at 42-43, 56.

Bryant and Peters developed and taught students “habits of mind” to use in this endeavor.<sup>40</sup> These habits of mind include: analyzing how similarities and differences between student and client influence the student-client interaction; envisioning the client, the student, and the legal decision-maker as three rings in a Venn diagram, for the purpose of analyzing where these three actors’ thinking overlaps and where it diverges; engaging in “parallel universe” thinking, in which the student actively looks for multiple interpretations of a client’s decision or behavior; identifying (in advance) pitfalls and red flags for misinterpretation; and recognizing one’s own biases and stereotypes in a self-analytical, rather than self-judgmental, manner, for the purpose of improving interactions in the future.<sup>41</sup>

Later, Bryant and Peters made explicit the central role of mindfulness in this methodology, and in particular, to the success of the student in truly hearing the client’s story, or in achieving isomorphic attribution.<sup>42</sup> Students must “mindfully listen” (and “mindfully speak”) to clients by constantly refocusing on the client’s meanings and subjective understanding of her experience or story, and commit to listening carefully, thoroughly, and deeply to the story as the client understands it.<sup>43</sup>

This type of listening, they argue, embodies “the four major signature characteristics of mindfulness: 1) awareness that is 2) openhearted, 3) centered in the present moment, and 4) nonjudgmental.”<sup>44</sup> In other words, it requires the student to employ Kabat-Zinn’s definition of mindfulness,<sup>45</sup> and to cultivate this skill through practice.

#### IV. THE M WORD

Although clinical law professors have embraced mindfulness, many are reluctant to embrace meditation as a way to achieve mindfulness.<sup>46</sup>

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40. *Id.* at 63.

41. *Id.* at 64-78.

42. Susan J. Bryant & Jean Koh Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Mindful Approaches*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* 183, 196-97 (Majorie A. Silver ed., 2007) (describing the skill of listening as one of the most important and challenging of the cross-cultural lawyering skills and arguing that “mindful listening” is the key to achieving isomorphic attribution).

43. *Id.* at 198.

44. *Id.*

45. *See supra* Part II.A.

46. Professor Becky Sharpless, in a session entitled “Mindfulness and the Law School Clinic” at the 2014 Conference, remarked: “I am not a meditator. Nor do I think that I ever will be.” Becky

And still fewer, including myself, are reluctant to teach it. Meditation has a bad reputation of being too “touchy-feely” or “mushy,”<sup>47</sup> and I, like others, worry that students will rebel.<sup>48</sup>

Before I further discuss meditation’s bad rap, let me clarify what I mean by “meditation,” for there are countless ways one might meditate. There are moving meditations (for example, Qigong)<sup>49</sup> and still meditations (for example, sitting on a cushion, paying attention to one’s breath); religious meditations (such as prayer); compassion meditations (such as loving-kindness); and any number of other practices. For the present purpose, and to keep things very simple, when I speak of meditation, I refer to Kabat-Zinn’s definition: “meditation is about letting the mind be as it is and knowing something about *how* it is in this moment.”<sup>50</sup>

The act of knowing how one’s mind is in this moment takes but only a moment. Thus, meditation can take place without purposefully setting aside time to sit down on a cushion, close one’s eyes, and concentrate on one’s breathing—what we commonly think of as meditation. Rather, meditation at its core (according to Kabat-Zinn) is the moment of awareness itself.<sup>51</sup>

When one views meditation as the act of being mindful, or the act of being alert to one’s thought processes—however fleeting the act—

Sharpless et al., Mindfulness and the Law School Clinic, 37th Annual Conference on Clinical Legal Education (Apr. 29, 2014) (on file with the *Hofstra Law Review*).

47. See, e.g., Jeffrey W. Stempel, *Feeding the Right Wolf: A Niebuhrian Perspective on the Opportunities and Limits of Mindful Core Concerns Dispute Resolutions*, 10 NEV. L.J. 472, 508-09 (2010) (describing perception of meditation as “touchy-feely”); Bob Lindemeier, *Letters from the Dhamma Brothers: Meditation Behind Bars*, CHAMPION, Nov. 2012, at 52, 53 (reviewing JENNY PHILLIPS, *LETTERS FROM THE DHAMMA BROTHERS: MEDITATION BEHIND BARS* (2008) (reflecting on a personally-held notion that meditations are “touchy-feely”).

48. Participants expressed this worry during the 2014 Conference, and I commonly express my own fear of teaching meditation. Even teaching law students the skill of reflecting on one’s performance has caused students to rebel. See, e.g., Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317, 320, 331-34 (2014) (citing Joshua E. Perry, *Thinking Like a Professional*, 58 J. LEGAL EDUC. 159, 160 (2008) (describing how students want to learn black-letter law and viewing reflection as “mushy”).

49. *Frequently Asked Questions: What Is Qigong?*, QIGONG INST., <http://www.qigonginstitute.org/html/FAQ.php> (last visited Feb. 15, 2015) (“The art of Qigong consists primarily of the use of intention, meditation, relaxation, physical movement or posture mind-body integration, and breathing exercises.”).

50. KABAT-ZINN, *supra* note 5, at 33.

51. *Id.* at 35 (“What we frequently call formal meditation involves purposefully making a time for stopping all outward activity and cultivating stillness, with no agenda other than being fully present in each moment.”); see also JAY MICHAELSON, *EVOLVING DHARMA: MEDITATION, BUDDHISM, AND THE NEXT GENERATION OF ENLIGHTENMENT* xvi (2013) (“Meditation, in a sense, is a more specific, more focused kind of mindfulness. It narrows the attention and awareness to a particular focus, such as one’s posture, the sensations of breath, a visualization, or the nature of mind itself.”).

meditation loses its stigma. I watched the de-stigmatizing of meditation at the 2014 Conference. There, Professors Becky Sharpless, Scott Rogers, and Bernard Perlmutter led a session entitled “Mindfulness and the Law School Clinic.”<sup>52</sup> In this session they demonstrated mindfulness techniques that they use with their students. Just moments after, Professor Sharpless explained to the audience that she is not a meditator and doubts that she ever will be a meditator. She then recounted an interaction with a student, stating that during a supervision session, a student did or said something, and that whatever he did or said caused her to pause, take a deep breath, realize she was angry, and observe her feeling of anger. As she was recounting this experience to the audience, Professor Rogers interrupted: “Becky, guess what? You were meditating.”<sup>53</sup>

Professor Deborah Cantrell, a clinician at the University of Colorado School of Law, recounted to me a similar story. She said that once when a student explained to her that he had missed a deadline, she paused, took a breath, and realized that she felt frustrated with the student. She observed her frustration. She took another breath, paused, and realized that she also felt confused. As she did this, she told the student of her mental process. She said to him: “I’m pausing for a moment, and realizing that I’m feeling confused.”<sup>54</sup> Calmly, she was able to articulate exactly why she felt confused, and she and the student together figured out that a miscommunication had occurred.<sup>55</sup>

Just as Professor Sharpless’s experience can be described as meditation, so too can Professor Cantrell’s. Each was able to observe the state of her mind at a given moment in time. Professor Cantrell’s explanation of her meditation to her student, as it was occurring, might also be characterized as the teaching of meditation in a law school clinic.

I am not suggesting that teaching students to formally meditate—for example, spend time in the classroom with students while all sit in silence for five minutes, paying attention to their thoughts—can or should replace more conventional teaching methods. Indeed, Professor Cantrell does precisely this with her clinical students twice per week. Nor am I suggesting that formal meditation practices, unlike the two examples I have described above, are “touchy-feely” or “mushy.”<sup>56</sup>

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52. See 37TH ANNUAL CONFERENCE, *supra* note 31, at 25.

53. See Sharpless et al., *supra* note 46.

54. Interview with Deborah Cantrell, Clinician, Univ. of Colo. Sch. of Law (May 2010).

55. *Id.*

56. See *supra* text accompanying notes 52-55. To be clear, I also am not arguing that “touchy-feely” endeavors—merely because we (or some of us) are fearful of them—should be avoided. There are many important skills we teach in law school, such as collaboration and leadership, which might also get a bad reputation as “touchy-feely,” but are nonetheless invaluable and seriously

Recently, a lawyer described to me his view of formal meditation. To him, formal meditation is a rigorous intellectual endeavor of “super-consciousness”—the skill of being hyper-aware of, and familiar with, the workings of his mind.<sup>57</sup> Formal practices in which one sets aside time to cultivate one’s ability to be aware of one’s thoughts, on a sustained basis, are precisely what make more possible the momentary meditations described above.<sup>58</sup>

Instead, in this Idea, I am suggesting that the distinction between mindfulness and meditation need not be as binary as we typically envision. Meditation is simply one of many ways of being mindful, and mindfulness is already at the core of much of our pedagogy.

## V. CONCLUSION

In this Idea, I demonstrate that mindfulness—the act of paying attention, on purpose, to the present moment—is directly relevant to the practice of law and, as such, is increasingly gaining traction in the teaching of law. Clinical law professors, such as myself, embrace mindfulness as a core tenet of our pedagogy. Yet, we have resisted teaching meditation—the M word—fearing it to be too “touchy-feely” for the classroom. This Idea demonstrates that meditation, when defined most simply, is nothing more (or less) than a practice of mindfulness, and that to the extent we teach mindfulness, we teach meditation as well.

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lacking in law school curricula.

57. Interview with Arnie Herz, Attorney (Sept. 28, 2014).

58. See *supra* text accompanying notes 52-55.