

*What do we want?*

# Mindfulness in Law!

**By Scott L. Rogers**



**A**bout a year ago, the comic strip *Bizarro* depicted a group of monks gathered at an assembly where their leader, megaphone in hand, shouted, and the throng replied:

“What do we want?”

“Mindfulness!”

“When do we want it?”

“NOW!”<sup>1</sup>

The rapidly growing presence of mindfulness across the legal landscape — from Bar conventions and section meetings, to law firms and government agencies, to law school programs and course offerings — echoes the urgency of the *Bizarro* message. Indeed, if you’ve kept up with the influx of mindfulness training for lawyers and judges, as well as the publication of books, Bar Journals and law review articles discussing mindfulness,<sup>2</sup> you’ve likely marveled at the pace of change over the decade. More than 20 law schools, recognizing the crucial role they play in equipping future lawyers with a robust set of tools to navigate the challenging terrain of law practice and life, offer mindfulness courses and training to their students.<sup>3</sup> At the same time, just as the humor embedded in Dan Piraro’s image relies on paradox, so too the very idea of infusing into the law the practice of mindfulness — often regarded as a New-Age, touchy-feely subject associated with navel-gazing and spacing out — appears to many as an oxymoron.

In fact, mindfulness is a form of mental training that carries with it benefits in the areas of cognitive performance, emotional intelligence, and health and well-being — areas of great importance to lawyers and to those who look to lawyers for their wise counsel, reflective demeanor and problem-solving expertise. It is receiving widespread attention in the popular culture, largely owing to a compelling body of medical and neuroscientific research vouching for its efficacy. There is perhaps no more important time than today in the evolution of law and society — where distraction, distress and distrust are so prominent — for a tool that serves these important ends to be introduced to lawyers and other members of the legal profession.

## What is Mindfulness?

Mindfulness is a practice of paying attention to present-moment experience in a manner that is engaged and unassuming. “Engaged” means attentive, interested and observant, and “unassuming” means being without judgment — open and receptive to what arises in the field of awareness.<sup>4</sup> By intentionally paying attention, moment by moment, we cultivate a more direct and clear relationship to what is arising, and, to the extent we are able to remain connected to this experience, are more responsive to what a given situation requires. As attorneys, our being responsive to the continually changing and demanding landscape of our professional life is fundamentally important in order for us to excel at the work we do, and to do it, day in and day out, without losing our edge or being worn down.

Consider for a moment the importance of paying careful attention to colleagues, clients and adversaries, and the times when your mind is focusing on something else or misinterpreting what is being said. Consider also the benefit of being able to keep your cool amid emotionally charged encounters with difficult people and upon learning undesirable news. It’s not so much that we can’t navigate our way through these situations, as it is that we are not doing so as effectively as we can. And, there are times when, notwithstanding our clear intention to remain calm and collected, the situation simply overwhelms us.

## The Science of Mindfulness

Over the course of the last decade, an exceptional body of medical and scientific research has been directed to studying mindfulness. Thanks to new technology allowing us to peer more deeply than ever into the activity, function and structure of the brain, there has been an accelerated growth in attention to, and volume of, mindfulness-focused research.

On the medical front, research has found mindfulness practices to be connected with decreased levels of the stress hormone cortisol, to lead to improved functioning of the immune system, and

to alleviate the suffering of chronic pain, help heal psoriasis and reduce cardiovascular disease and diabetes. Delving even deeper, recent findings report mindfulness to influence the “expression” of genes associated with inflammation and to slow the rate of cellular aging.

In the neuroscience realm, researchers have found mindfulness practices to be associated with a thickening of the regions of the brain associated with focus and concentration. They have also found that meditators have stronger connections between brain regions, show less age-related cortical thinning when compared to a control group, and reveal greater amounts of gyrfication (“folding” of the cortex), which may allow the brain to process information faster.

In the mental health arena, along with being a helpful tool for working with anxiety and depression relapse, mindfulness has been found to be helpful in treating conditions such as obsessive-compulsive disorder, borderline personality disorder and addiction.

My colleague, Paul Singerman, experienced in bankruptcy law and who has taken a strong interest in mindfulness, tells audiences that while it may seem that mindfulness is “too good to be true,” in his opinion, it just may be as good as it seems. But, anyone who takes an interest in mindfulness soon learns that practicing mindfulness is hard work!

## The Practice of Mindfulness

The practice of mindfulness is easy to learn. It involves a subtle shift in the attention you bring to what you are doing, moment by moment. For example, while you have been reading this article, it is likely your mind became distracted by people, sounds or even your own thoughts. Mindfulness involves realizing that the mind is distracted and having the mental wherewithal to direct your attention back to the task at hand. In a moment, I’ll share with you a mindfulness exercise that involves placing attention on the breath. But do not lose sight of the fact that at this moment you are placing your attention on these words, and doing so intentionally and with the capacity to notice when

your mind wanders and, if you choose, to return your attention to these words is . . . well, mindfulness.

You might wonder why this is important. After we practice the following mindfulness exercise, I'll share with you some of the reasons why it may be one of the most important things we do, personally and professionally. First, let's shift gears and move from thinking about these words to thinking about something else — the breath. We'll also try to move beyond thinking, to experiencing the breath in a more direct manner.

1. *Begin (with eyes open) by placing your attention on your breathing.*

2. *Think to yourself: "I am breathing in . . . I am breathing out," as you follow each of your next three breaths.*

3. *Now, more directly experience the breath by feeling the rising and falling of your belly with each of the next three breaths. It may be helpful to close your eyes.*

What did you notice? First, were you able to *think* about the in-breath and out-breath? This involved shifting your focus and speaks to the *faculty of attention*. You have the ability to place your attention where you choose, a skill not to be taken lightly. Next, were you able to shift from "thinking" about the breath to experiencing it more directly? This more immediate "knowing" likely became pronounced when you *shifted your attention* to feeling the breath moving through your body with the rising and falling of your belly. Lastly, how would you describe the experience? For many, the experience of placing attention on the breath for a few moments can be calming or relaxing. While this isn't always the case — and it isn't the primary objective of mindfulness practice — it is a nice benefit you likely will experience from time to time.

In a moment, we'll take our exploration of mindfulness to the next level and where the scientific community is focusing its attention.

But, first, lower or close your eyes and pay attention to your breathing for the next five breaths.

## Mindfulness Exercise #1

1. *Begin (with eyes open) by placing your attention on your breathing.*

2. *Think to yourself: "I am breathing in . . . I am breathing out," as you follow each of your next three breaths.*

3. *Now, more directly experience the breath by feeling the rising and falling of your belly with each of the next three breaths. It may be helpful to close your eyes.*



Did you notice your mind wandering? If you're like most people, you did. Spoiler alert: If you continue to practice mindfulness, you will come to realize just how much your mind wanders. This can be a source of distress as you realize your mind has a mind of its own, so to speak. It also creates an invaluable opportunity to do something about it. Mindfulness is a *training* of the mind. Research points to the extraordinary capacity of the brain to be trained and to restructure itself in alignment with the training — a phenomenon known as neuroplasticity.

A recent Harvard study addressed both the mind's tendency to wander and its consequences, highlighting why it can be helpful to train your mind to wander less (or to be more aware of its wandering). Dan Gilbert and Matthew Killingsworth had subjects report, at random moments during the day, whether or not they were on task. For example, if they were working on a project but at the time they were prompted realized that their thoughts were elsewhere, they were off task. The researchers found that people's minds wandered about 47 percent of the time. It's like our minds are puppy dogs that are continually distracted.

A cautionary lesson is that we tend not to realize when our mind wanders; this can have implications for our pro-

ductivity, focus, organization, listening and decision-making. This alone is cause to take seriously the adverse effects of a distracted mind and consider a tool like mindfulness. A second finding that Gilbert and Killingsworth report — and one which claimed many headlines — was that when the mind was off task, people reported experiencing lower mood. Hence, "A Wandering Mind is an Unhappy One."<sup>5</sup>

What can we do about this? Let's return to the exercise and add an important instruction.

1. *Bring yourself into a posture that is upright and stable.*

2. *Lower your eyes (or close them if you prefer, after you learn the complete instruction).*

3. *Bring your attention to your breathing, following the in-breath, following the out-breath.*

4. *Rest your attention on the flow of the breath through your body, with the intention of keeping it there.*

5. *When you notice your mind wandering, bring your attention back to the breath.*

6. *Do this for a few moments, then lift your gaze or open your eyes.*

Do you notice what was added to the instruction? An important mindfulness insight is that it makes sense that the mind wanders, and there is nothing about mindfulness practice that tries to stop the mind from wandering, or clear the mind of thoughts. Mindfulness is oriented around allowing the moment to be *as it is* — thoughts, feelings, body sensations and all. Rather than resist or react unthinkingly to what may be unpleasant or unwanted, the practice is to recognize what is arising and bring attention back to the original object of attention — be it the legal case you are reading, the person you are listening to, or the breath. We practice with the breath in order to strengthen our ability to notice a wandering mind and become more expert at bringing it back.

While the mindfulness instruction may

seem simple, many find it to be extremely challenging — even frustratingly so. My colleague, cognitive neuroscientist Amishi Jha, compares the mental training of mindfulness with the physical training of lifting weights. It is hard work. Each repetition in the gym is akin to noting that the mind has wandered and bringing it back to the object. Just as physical exercises bring measurable benefits to muscle mass and strength, so too mindfulness is regarded as exercising the “muscle” of attention.<sup>6</sup> Just as a competitive advantage comes to those who find the discipline to work out at the gym, so too the manifold fruits of mindfulness are realized by those who find the discipline to practice it.

### Bringing Mindfulness into Your Workday

You can bring mindfulness practice into your workday in ways that are considered “formal” and “informal.” A formal mindful sitting practice entails sitting for a set period of time (say, five to 10 minutes) and following the above six-step instruction. It can be helpful to listen to a guided recording; many can be found on the Internet. On the website listed at the end of this article, you will find a series of one- to 20-minute guided mindfulness exercises that you can listen to or download.

Another formal practice I highly recommend, which might not seem so formal, is called “mindful walking.” Much like mindful sitting, you take your footstep as the object of your attention and, when you notice your mind wandering, you return attention to your footstep. This practice can be seamlessly embedded into a workday.

An informal practice you may find helpful is called the “But For Pause,” which involves taking a series of breaths — with awareness of the sensations of the breath flowing through your body and of the activity of your mind — when you detect that you are becoming agitated. In time, you’ll notice that *but for the pause* you may well have acted in a way that disserved your interests. There is nothing profound in these insights — what is profound is how you notice yourself

### Mindfulness Exercise #2

1. *Bring yourself into a posture that is upright and stable.*

2. *Lower your eyes (or close them if you prefer, after you learn the complete instruction).*

3. *Bring your attention to your breathing, following the in-breath, following the out-breath.*

4. *Rest your attention on the flow of the breath through your body, with the intention of keeping it there.*

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gaining greater mastery over situations and personal exchanges that previously may have gotten the better of you.

### The Big Picture

The rule of law evolved to bring order out of chaos and establish a vehicle for human beings to rise to the highest levels of intellectual achievement, commerce, social connection, and health and well-being. Today, the practice of law is regarded by many as having re-entered a state of nature where rules are subverted, civility is lost, and the bottom line has become the top priority. Mindfulness, like the rule of law, serves as a vehicle for establishing a more enduring stability. In many ways, it is refreshing to see the legal profession — charged and equipped to serve society, resolve conflict and establish a more stable order — looking to mindfulness as a tool to help serve this noble end.

### Learning More

The webpage, [www.mindfulnessinlaw.com/lbsa](http://www.mindfulnessinlaw.com/lbsa), provides information and resources you will find helpful for furthering your understanding and practice of mindfulness.

### FOOTNOTES

1. Dan Piraro, Bizarro Blog, Aug. 23, 2013, available at: <http://bizarrocomics.com/2013/08/23/gimme-gimme/>.

2. Scott L. Rogers, “Mindfulness in Law,” *The Wiley-Blackwell Handbook of Mindfulness* (Amanda Le, Christelle Ngounoum and Ellen Langer, eds., 2014).

3. The University of Miami School of Law established a Mindfulness in Law Program, [www.mindfulness.law.miami.edu](http://www.mindfulness.law.miami.edu), and the University of California-Berkeley formed an Initiative on Mindfulness in Law, [www.law.berkeley.edu/mindfulness.htm](http://www.law.berkeley.edu/mindfulness.htm). Other law schools with mindfulness offerings can be found online: [www.themindfulnessschool.com](http://www.themindfulnessschool.com).

4. Scott L. Rogers, “Mindfulness Across the Curriculum: Infusing and Integrating Mindfulness into the Law School Classroom,” 36 U. Ark. Little Rock L. Rev. (forthcoming 2014).

5. Jason Castro, “A Wandering Mind is an Unhappy One,” *Scientific American*, Nov. 24, 2010; [www.scientificamerican.com/article/a-wandering-mind-is-an-un/](http://www.scientificamerican.com/article/a-wandering-mind-is-an-un/).

6. Amishi P. Jha, “Mindfulness Can Improve Your Attention and Health,” *Scientific American Mind*, March 1, 2013; [www.scientificamerican.com/article/mindfulness-can-improve-your-attention-health/](http://www.scientificamerican.com/article/mindfulness-can-improve-your-attention-health/).

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