Practicing From the Inside Out

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I. Introduction

One of the more memorable observations about lawyers I've ever heard was spoken by Rob Lehman, who at the time was president of the Fetzer Institute, a philanthropic organization in Western Michigan that funds research on the relationship of the body, mind and spirit. We were discussing the inner lives of lawyers, a topic in which we shared an interest and about which we were, frankly, concerned.

At one point Lehman, a law school graduate and one-time law teacher, described the law as "the tissue of the outer life."[1] I liked the conceit, which made a certain amount of sense to me on an intuitive level, and so I asked him what it suggested about lawyers themselves and the lives they lead.

"Well, it's a sad thing," he said, "but because lawyers work with the law all the time, they tend to live above the surface, alone."[2]

Above the surface, alone. It's a powerful image, and one that came to mind again and again as I read Leonard Riskin's article "The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients."[3] With this article, Professor Riskin does a great service to the legal community by providing a solidly reasoned and passionately argued case for turning our attention to a largely ignored aspect of lawyers' and law students' experience. In fact, he goes a long way toward offering a remedy to the problem so aptly described in Lehman's memorable phrase by providing a method by which law students and lawyers can drop *below* the surface into the domain of our shared

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1. Interview with Rob Lehman, President, Fetzer Institute, in Kalamazoo, Mich. (Spring 1997).

2. *Id.*

3. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers and their Clients*, 7 Harv. Negot. L. Rev. 1 (2002) [hereinafter Riskin, *Contemplative Lawyer*].

humanity, where so much is revealed that can make law practice more meaningful and satisfying.

His timing couldn't be better, because interest in the lawyers' inner life appears to be growing. As something of a lightning rod for that interest,[4] I have come to see it as a natural outgrowth of the distressing level of unhappiness in the profession. But it also reflects a larger trend in the professions generally, one that has been given expression by Saki Santorelli, director of the Center for Mindfulness in Medicine, Health Care and Society at the University of Massachusetts Medical School:

> Curiously, almost all of our contemporary, work-defining uses of the word practice connote an externally directed activity done by one human being to, or on behalf of, another. Almost nowhere in our modern lexicon does the use of the word practice suggest that side by side with acquiring knowledge of our chosen field we are simultaneously called on to make an active, ongoing effort to work with ourselves inwardly if we are to engage in the full practice of our profession. Is this simply because we take for granted the inseparability of these twin aspects, or has something been lost in our use of the word practice?[5]

What follows are some thoughts in response to Professor Riskin's article, and more generally, on the current state of the profession.

II. A Special Kind of Balance

What does it mean to live above the surface, alone? Among other things, it suggests being out of balance in a fundamental way. Within the legal profession, most discussions about the need for balance in life—which have increasingly become the stuff of bar journal articles and bar association programs—focus narrowly on the lawyer's outer life (the "thinking, judging and action" to which Professor

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4. As a result of writing Transforming Practices: Finding Joy and Satisfaction in The Legal Life, I have heard from a great many lawyers around the country who have either written or called to discuss the relevance of the inner life to law practice. I have also found that bar leaders have a considerable interest in this subject, which has often led to invitations for me to speak to groups of their lawyers. My sense is that, mindful of the dark cloud of dissatisfaction that hovers over so many members of the profession, leaders are looking for something new, specifically a new way of conceptualizing the profession's problems so that they can get a grip on how to cope with them. The notion that the lawyer's inner life is being neglected at the profession's peril has struck a chord in this regard.

5. Saki Santorelli, Heal Thy Self: Lessons on Mindfulness and Medicine 34 (1999).

Riskin refers).[6] What this means is that the elements typically considered to be parts of an ideally balanced whole are limited to outer elements—things to *do* to lower stress and promote happiness, things to *strive* for, ways to *behave*, *activities* to try. It is said to be crucial, for example, to balance time in the office with time for family, intellectual pursuits with physical activity, work with play, and so on. Such balance is surely helpful. But it is not enough.[7]

In fact, the fundamental problem of imbalance cannot be addressed by merely rearranging the furniture, so to speak, of one's life so that it comports with some externally agreed-upon ideal. Instead, it is only by observing that "furniture" clearly and non-judgmentally through the *inner* experience of awakened mindfulness that lawyers or law students are able to see their situations for what they are and then redress this crucial, but so often overlooked, lack of balance.

Another metaphor for getting at this phenomenon comes again from Santorelli, who writes: "The linear, discursive mind has come loose from its moorings—it's proper place. We have built a boat and mistaken it for the sea. Yet beyond the labels of *patient* or *practitioner* (read "client" and "lawyer") we are all in the same boat thirsting for the same living water."[8]

If the legal profession tends to mistake its boat for the ocean, perhaps it makes sense to extend the metaphor and suggest that these days the boat is listing, taking on water, and causing a kind of professional sea-sickness. By opening individual lawyers and the profession collectively to a simultaneous awareness of both the inner and outer contexts of law practice, mindfulness meditation promises to help restore some equilibrium.

What Santorelli refers to as "the linear, discursive mind," is most apparent in the practice of analytical reasoning, the legal profession's great and essential tool.[9] What mindfulness meditation can offer law students and lawyers in this regard is help in keeping this tool in its proper place—tethered to its mooring. By facilitating a clearer sense of what is happening in the moment, mindfulness opens a space in consciousness, allowing the practitioner to watch his thoughts and choose not to react or identify with them, and to retain the option of

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6. Riskin, *Contemplative Lawyer*, *supra* note 3, at 3.

7. For more on what it means to live "above the surface, alone," see STEVEN KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE 14 (2002).

8. SANTORELLI, *supra* note 5, at 43.

9. *See generally* ALAN BRISKIN, THE STIRRING OF SOUL IN THE WORKPLACE 141 (1998) ("The search for meaning does not require us to throw out analytic reasoning, but it does suggest embodying logic with heart and passion.").

using specific thoughts, or types of thought—legal analysis being one example—as *tools,* rather than allow them to become tyrants.

Lawyers who identify too closely with their legal (i.e., analytic, reductionist) mind, at the expense of their larger human mind—and here I use the word "mind" in the Buddhist sense of comprising thoughts and emotions—suffer a great deal. The statistics on burnout, substance abuse, divorce and general unhappiness tell the tale.[10] To lawyers whose standard way of relating to themselves and to clients is mired in non-reflective, habitual and mind*less* thought and behavior, all that is not in their narrow boat finds no relevance in their law practice. They cannot choose to restrain an impulse to attack in order to consider the risks and benefits of such a course of action. They cannot pause to ask themselves if they are really listening to the clients in their offices, who may be giving factual answers to their questions, but are also saying a great deal more in subtler ways. Nor can they simply stop, become aware of breath, observe thoughts and feel present at any given moment. The lawyer's philosophical map, as Professor Riskin describes it, is like a tight-fitting, legal version of Santorelli's boat, with which the lawyer comes to identify at the expense of a vast and rich sea of possibilities.[11]

One characteristic of mindfulness meditation that tends to appeal to both law students and lawyers—particularly those who otherwise might shun so-called spiritual, or contemplative, practices—is that, although it is a non-analytical, non-judgmental practice, it is investigative in nature. People drawn to law often have an affinity

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10. Many studies substantiate the seriousness of the professional malaise. For summaries of the data, see Lawrence S. Krieger, *What We're not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from its Roots*, 13 J. L. & HEALTH 1 (1998-99); Susan Daicoff, *Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism,* 46 AM. U. L. REV. 1337 (1997); Patrick J. Schiltz, *On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession,* 52 VAND. L. REV. 871 (1999).

11. I have written about such phenomena in TRANSFORMING PRACTICE: FINDING SATISFACTION AND JOY IN THE LEGAL LIFE. *See* KEEVA, *supra* note 7, at 8 ("Such gifts as emotional intelligence, compassion, and warmth have little if any standing in the current legal culture. And in a legal academy that extols the economic analysis of legal outcomes while giving almost no consideration to the law's—and law practice's—psychological and emotional effects, students fall under the spell of a legal map that is at odds, in both its narrowness and its lack of mystery and feeling, with life as they lived it prior to law school. In no time flat, intellectual rigor has become their true north, and a mountain range of reason has replaced their old landscapes of feeling, convictions and beliefs.").

for investigative work, and this type of investigation, which substitutes discernment for judgment and critical analysis, can lead to insight rather than disconnection and isolation. Being able to investigate one's own experience in the moment in order to observe what is actually happening in both gross and minute detail, offers a way to redress the sense of loss and loneliness suggested in the above-the-surface quality to which Lehman referred.

III. GETTING REAL

Among the complaints the non-lawyer public makes about lawyers, many suggest a sense that they tend to put process above people. In fact, this complaint seems to be emblematic of a whole range of grievances that describe a profession populated by practitioners who are more concerned with the case—that is, an artificial construct—than with the person sitting across the desk.[12] At its worst, this attitude is reflected in the lawyer who tells a colleague—and this is a true story—that what he needs in order to get out of his professional doldrums is not a sense of deeper meaning in his work, or a job at a more exciting law firm, but instead a "quad"—that is, a quadriplegic accident victim whose case is likely to be lucrative.[13]

My impression, born out in interviews with clients over the years, is that what troubles so many of them is a sense that certain mindsets and attitudes stand between them and the lawyers they hire. Several implied questions are clear, including: why can't they (i.e., lawyers) just talk to me like normal human beings? What is it about practicing law that makes people so unreal, so detached from the rhythms and concerns of everyday life? I believe the research suggesting that non-lawyers see lawyers "as dominant and aggressive professionals who are lacking in caring and compassion,"[14] supports my impression, since "real" people let their guards down now and then and do not frame every situation in dry, legalistic terms.

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12. Interview with Janeen Kerper, Professor, California Western School of Law, *in Q&A: The Problem with Palsgraf at* http://www.transformingpractices.com/qa/qa1.html.

13. This comes from a conversation with a friend, Helen Desmond McDonald, executive director of the Rhode Island Bar Association, immediately after she spoke to the lawyer in question. She had suggested that "in order to recharge his batteries" (it seems he had lost his zeal for practice), he might try reading TRANSFORMING PRACTICES. His response was that a "quad" was all it would take to do the trick.

14. Chris Guthrie, *The Lawyer's Philosophical Map and the Disputant's Perceptual Map: Impediments to Facilitative Mediation and Lawyering*, 6 HARV. NEGOT. L. REV. 145, 167 (2001).

They understand that people who come to them in need, often at moments of great suffering, can use a strong, but also caring hand.

Often, when I speak to groups of lawyers or law students, I quote the Buddhist teacher and author Pema Chodron, who makes it very clear in her writings where she believes the joy in life is to be found: it comes "from a sense of being real, and seeing realness in others."[15] I ask my audiences to think about a time when they felt truly seen by another human being—seen for who they are, without judgment or agenda. The room becomes quiet. "If you are like most people," I say, "this is not a common experience for you. For some people it is extremely rare or doesn't happen at all. But if you can provide this kind of experience for your clients, you will be offering them a gift of inestimable value." Invariably, heads nod. "And if you simply try to do this, say, by listening more closely—without expecting too much of yourself at first—you will feel better about what you do for a living."

As Professor Riskin points out, limiting mindsets, particularly those described in the "Lawyer's Standard Philosophical Map," can be significant impediments to providing clients with appropriate services (as well as causing suffering for both lawyers and clients).[16] Too often what lawyers seek to address are "needs" that are both assumed and generalized and bound up in narrow legalistic perspectives.

By contrast, consider one particular lawyer who strives to be mindful of the fact that "whether clients come to discuss a business dispute, a will or a contract, they almost invariably bring confusion, fear and anger" to the table. "When they come in such condition," he adds, "they are likely to accept legal solutions that don't serve them as well as they might." This particular lawyer, Arnie Herz of New York City, is one whose clients tend to see him as authentic and consistently present for them.[17] In an article I wrote for the *ABA Journal,* profiling Herz, he described his relationships with clients in the context of one particular relationship:

> You have to identify and acknowledge any fear and/or anger or confusion that clients may be experiencing. When you do that, the relationship is totally transformed. They then know what it means to be heard, because you're seeing their true interests—which they rarely know they have—rather than a mixture of

15. PEMA CHODRON, START WHERE YOU ARE: A GUIDE TO COMPASSIONATE LIVING 64 (2001).

16. Riskin, *Contemplative Lawyer*, *supra* note 3, at 14.

17. *See* Steven Keeva, *What Clients Want*, A.B.A. J., June 2001, at 48, 50.

> emotions that sets them off balance. With Macie, I had to lead her through the fear and give her some place to stand.[18]

In commenting on this experience, Macie, the client in question, told me, "When he did that, I never felt so understood in my life."[19]

In fact, practicing mindfulness is at the very heart of Herz's approach to lawyering, meditation and negotiation. He knows that being mindful of opportunities to connect in a genuine and humane way—which requires awareness of the habitual dissimulation that is typically accepted as part of the legal persona—can open up lawyer-client dialog at a deep level and move it toward further authenticity for both client and lawyer.

Indeed, by providing a space in which lawyers can become less identified with all that keeps their vision narrow and their bodies tense, mindfulness meditation may help untie a kind of Gordian Knot, one that can best be described by juxtaposing two points that several studies have made quite clear: (1) clients crave supportive, productive human relationships with good lawyers; and (2) lawyers feel isolated from supportive, productive human relationships.[20]

Mindful lawyers, who can allow themselves to dwell in uncertainty rather than scramble frantically for answers to such seemingly insoluble conundrums as those implied by these findings, may eventually realize that in the field of our common humanity—that which lies beyond those mindsets that can isolate lawyers from both clients and from their own inner selves—lawyers and clients have, at the human level, a great deal to offer one another. To the mindful practitioner, the words of the writer Byron Katie will resonate: "Reality and the story never match," she has said, referring to our minds' elaborate constructs; "reality's always kinder."[21] It is in learning to trust this truth—and such trust blossoms in the practice of mindfulness meditation—that being real and seeing the real in others becomes a common occurrence.

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18. *Id.*

19. *Id.*

20. *See* Merrilyn A. Tarlton, *On Being Human*, LAW PRAC. MGMT., July/Aug. 1996, at 24; *see also* KEEVA, *supra* note 7, at 112.

21. Byron Katie, *The Work of Terrorism, Dialogue 1*, *at http://www.thework.com/terrorism/dialogue1.htm*; *see generally* Katie's website at http://www.theworkofbyronkatie.com/.

IV. Riding the Thought Train: Mindfulness, Zero-Sum Thinking and Intrinsic Meaning

Mindfulness meditation helps us learn to be where we are. It teaches us that what is, is enough, and that rather than try to augment or somehow fix it it, we need only accept it. What most of us tend to do might be described as being-*added* (rather than just being), in that it adds to the bare bones of reality with a flurry of overlays. We construct stories about what is going on by making judgments and assumptions, jumping to conclusions based on earlier experiences, and attributing motives on the flimsiest evidence or on no evidence at all save our unexamined prejudices. We find ourselves certain that people are trying to hurt us or stand in our way without ever questioning the basis for this notion. Or we concoct long, passionate romances from a haphazard glance or a smile. We get lost on trains of thought that meditation teacher Joseph Goldstein describes this way:

> When we lose ourselves in thought, identification is strong. Thought sweeps up our mind and carries it away, and in a very short time we can be carried far indeed. We hop a train of associations, not knowing we have hopped on, and certainly not knowing the destination. Somewhere down the line we may wake up and realize we have been thinking, that we have been taken for a ride. And when we step down from the train, it may be in a different mental environment from where we jumped aboard. When we do not know that we are thinking, our thoughts carry us into so many different worlds.[22]

Mindfulness meditation brings us back to the truth of the moment, beginning with the fact that we are here, breathing. From this perspective it becomes possible to watch our thoughts, notice that they brighten like fireflies then disappear, and see beyond them to something deeper and lasting.

But certain thought patterns, some of them characteristic of particular professions, can prove especially tricky to work with because they provide such potent fuel for the thought train. Buddhists use the word "hindrance" to describe obstacles in meditation practice such as restlessness, torpor, clinging and aversion, all of which take the meditator's awareness away from the present moment. In the world of both law school and law practice, I would suggest that one hindrance is particularly pernicious: zero-sum thinking.

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22. Joseph Goldstein, Insight Meditation: The Practice of Freedom 59-60 (1993).

We see this among law students who polarize their experiences, seeing them as either total successes or abject failures. They are either in the top ten percent of the class, or they are losers. They either get the interview with the top-tier firm, or they might as well leave the profession. I have seen this kind of thinking even among brand new law students from remote rural areas who, prior to starting law school didn't know the name of a single large law firm in their state and had no idea that a job with such a firm was thought to be especially desirable. All of a sudden, within weeks of becoming 1Ls, the notion of working in their home towns and doing the kinds of work that local lawyers do—lawyers they had admired and respected—represents the bad end of the zero-sum equation.[23] It's as if, having entered a culture that denies the relevance of their subjective experience, they suddenly embrace an extrinsic measure of their worth, one that threatens to leave them above the surface and increasingly isolated.[24]

Mindfulness is all about creating the possibility of seeing beyond limiting perspectives and categories, beyond the boat if you like (as in interest-based negotiation, which would seem to be a natural beneficiary of a mindfulness meditation practice). This suggests great value in bringing it to the legal academy, where these common hindrances could be acknowledged and discussed—and not just because they cause suffering for lawyers and law students, who become saddled with an unsustainable burden of perfection—but also because they inhibit the professional's fullest flowering as a compassionate, conscious human being.[25]

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23. My observations here come from some recent work I did co-teaching a Carnegie Endowment seminar at Texas Tech University Law School during the fall semester of 2001.

24. Lawrence Krieger, *Institutional Denial, the Dark Side of Law School and Fresh Empirical Guidance for Constructively Breaking the Silence*, ___ J. LEGAL EDUC. ___ (forthcoming 2002) (manuscript on file with the author) (summing up the research on intrinsic versus extrinsic motivation: "As one would expect from the foregoing studies on goal content, research has also found that 'extrinsic' motivation—working or acting to gain security, relieve guilt or fear, please others or gain rewards (which would include Comparative Worth and American Dream correlates such as grades and money)—predicts decreased well-being, meaning, and personal integration. By contrast, 'intrinsic' motivation—working and behaving in ways that are either inherently satisfying or that reflect strongly one's deepest convictions and beliefs—is correlated with enhanced well-being, sense of meaning, and increased internal and social integration.").

25. *See* KEEVA, *supra* note 7, at 84 ("By helping you get past the fears, beliefs, and opinions that get in the way of listening well, mindfulness helps you hear more of what your client is really saying, allowing you to bring the broadest possible perspective to a case. This can have an impact on winning."). I would add that it can also

As Professor Riskin points out, "mindfulness can help lawyers expand their focus to include . . . broader perspectives and to carry out the aspirations associated with them."[26] An example of this, and one that illustrates the importance of both getting beyond zero-sum thinking and finding intrinsic measurements of success is the work of Steven Schwartz, founder and director of the Center For Public Representation in Northampton, Massachusetts.

Schwartz and his staff represent mentally ill people, both in their day-to-day legal travails and in the larger systemic issues they face. Alleviating suffering—which, in a society that glorifies the thrill of victory and ascribes shame to the agony of defeat, often wanes as a goal during law school—is what Schwartz's work is about, even though achieving it is, in most cases, a long-haul proposition. But it is the way in which he maintains a powerful connection to a deep inner commitment to his clients' well-being that makes Schwartz an excellent model for those gripped by a zero-sum mindset.

Even lawyers who usually win will eventually lose. What makes Schwartz unusual is that because the civil commitment rate for mentally ill people in Massachusetts is ninety-two percent, he and his colleagues lose constantly. "That's why," he explains, "at the Center we spend a great deal of time on the question of where the satisfaction can come from. In fact, in a significant way it is the foundational question of our entire training and staff development program." (Not coincidentally, the Center's culture emphasizes the importance of contemplative practice.)

In their determination to keep their eyes on the ball of intrinsic meaning, so that they can sustain the energy needed to fulfill the Center's purpose, Schwartz and his staff have developed an office culture with an unusual overriding theme: one cannot look to outcomes; one must look to how one is in the moment. It's not winning that matters; it's how you practice law. Schwartz says: "It's about the quality of legal practice, not the result of the legal practice." What this means on a practical level is that for a Center lawyer who has just represented a client in a civil commitment hearing for the second time, the relevant question is not, "Did you win?" It is "Were you as skillfully present for the client in this hearing as you were the first time? Did you bring more creativity to it this time?"[27] This has two

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have an impact on helping parties to a negotiation reach a win/win solution that improves relationships.

26. Riskin, *Contemplative Lawyer*, *supra* note 3, at 48.

27. Steven Keeva, *Finding Satisfaction: Zapping the Zero-Sum Demon*, LAW PRAC. MGMT., July/Aug. 2001, at 65-66.

tangible benefits, one for the Center lawyer and one for the client. Given how unlikely it is that a successful outcome will be achieved before the hearing board, the lawyer is nonetheless able to exercise some control over the situation by focusing attention on something valuable that *can* be achieved. In doing so, he adds value to the client's experience, both by serving as a caring and compassionate witness at a time of need, and by demonstrating that, win or lose, the client is worthy of care and respect.

Schwartz maintains that such questions are equally relevant to lawyers in other practice areas, many of whom do work in which there aren't really winners anyway. "In areas like divorce law, bankruptcy law and personal injury law, you may save money or win money for someone, but is that really winning when there's so much suffering involved?" Schwartz's law practice is an object lesson in how actively cultivating presence, moment-to-moment can change the legal playing field from one in which the rules of the game are almost entirely set by outer, or extrinsic sources, to one in which intrinsic considerations supply the meaning, the mooring and the satisfaction. One of the principal reasons for cultivating a vibrant inner life—and, as Professor Riskin amply demonstrates, mindfulness meditation is an ideal method for doing so—is to become more grounded in reality so that you can spend your energy on what really matters to you and not waste it on the trivial and the extrinsic. Indeed, mindfulness offers us a chance to look at extrinsic sources of meaning dispassionately and to finally see them for what they are—thin gruel.

V. A Final Thought

The novelist and theologian Frederick Buechner defines vocation as "the place where your deep gladness meets the world's deep need." Unfortunately, neither gladness nor need of the kind Buechner is referring to have a place on the Lawyer's Standard Philosophical Map described by Professor Riskin. And it is his great contribution, in *The Contemplative Lawyer*, to offer law students, lawyers and perhaps even clients (who may be the beneficiaries of wise lawyers' examples), a way of finding a sense of vocation in the law. Mindfulness meditation—through stillness and a steadfast willingness to see reality as it is—has the potential to both bring gladness and reveal need, and in so doing help to heal a troubled profession.