

**The Mindful Lawyer and the Challenges of Diversity:
The Benefits of Mindfulness
in Differently Diverse Practice Settings.***

By Rhonda V. Magee¹

The goal of eliminating bias in the legal profession depends for its success on our capacities to communicate across differences of experience and to find our ways, again and again, back to places of common ground. Whatever else may be said about how we do this, eliminating bias in the legal profession requires that we become as aware as we can be of the ways we are invisible to barriers to genuine communication between ourselves and other human beings – barriers such as invisible privileges, subtle prejudices in our reactions and receptivity to one another, and blindness to the consequences of differences in experience within our own lives, and within the lives of those with whom we work, and those whom we wish to serve and represent ethically, respectfully, and effectively. While we like to believe that we are beyond the need to work on it, deep inside most of us know we could benefit from the development of practices which enable us to develop these capacities. This is especially important to us as members of a profession dedicated to justice, and in service of that goal, to eliminating bias or minimizing its effects on ourselves, our colleagues, and our clients.

Bias in the law is a legacy of our culture’s checkered history. It is a consequence of patterns of bias within the society at large. We can see its effects everywhere. It makes us uncomfortable, for example, to recognize the lack of racial, ethnic, gender, and disability diversity in our public and own private lives. But we must, sometimes, focus precisely on that which makes us uncomfortable if we want to see the whole truth and develop appropriate strategies for the ongoing work of repair.

The Bar seeks to do that by paying attention, for example, to how women in the profession are doing, only a generation and a half now into the work of dismantling the bars’

¹ * Copyright by Rhonda V. Magee, 2008. Adapted from “*The Mindful Law Professor and the Challenges of Diversity*,” an article-in-progress. Rhonda V. Magee is a Professor of Law at the University of San Francisco. She is a long-time practitioner of meditation and has trained in a range of compatible practices aimed at assisting in the development of self- and relational awareness. She is working on a manuscript entitled RELATIONAL CONTEXT THEORY, which sets forth an approach to the study of law and practice of law which encompasses the mindfulness/contemplative approach, the insights of critical legal theory and its identity-focused progeny (including critical race and gender theory), and the “humanizing” movement within legal education.

previous commitments to being an all-male (and an all white) preserve. In this connection, the American Bar Association's Commission on the Status of Women in the Profession came out with a report last year focused on women of color.² The report told us something that many of us already know: that women of color are leaving law practice in numbers that make fulfillment of diversity goals, and creation of diverse and more effective communities of expertise, more unlikely all the time.

For most of us, the integrated settings in which we practice, while more diverse than they were a generation and ½ ago, continue to be disproportionately white, male and straight. And even when and where we have succeeded in increasing the percentage of minorities and the range of minority groups represented in a given setting, minorities continue to report feeling disproportionately alienated and challenged by the institutionalized cultural dynamics inherent in traditional environments. One of the most difficult aspects of all of this is the difficulty people experience in talking about their own experiences along these lines, and in listening with an open heart to others who speak about these issues. It stands to reason, then, that one of the things we can do to assist in the creation and maintenance of more effective diverse communities is to heighten our capacities for genuine communication with one another about the differences, and the similarities, which make for real differences in our lives. Thus, working and practicing in diverse settings gives us the opportunity, again and again and on a daily basis, to practice with becoming more aware of our habits and conditioning around deeply-engrained indicia of difference such as race, sexual orientation, and gender.

Such work is challenging. Mindfulness can help. Mindfulness practices can help make us more comfortable with the uncomfortable feelings and reactions that arise, and with the uncertainty that is an inevitable consequence of venturing out of our comfort zones and dealing with things that are hard to "sit with." The term "mindfulness" gained prominence in popular culture and mainstream publications over the past two decades,³ and that trend is presently

² "*Visible Invisibility: Women of Color in Law Firms*," American Bar Association Commission on the Status of Women in the Profession (2007) (executive summary available at www.abanet.org/women/VisibleInvisibility-ExecSummary.pdf).

³ Jon Kabat-Zinn, Ph.D., has been credited by many with introducing mindfulness meditation practices into mainstream professional institutions in the United States. The founder of the Stress Reduction Clinic at the University of Massachusetts, he began teaching Mindfulness-Based Stress Reduction at the Clinic in 1979. He has authored two leading books on the practices. See Jon Kabat-Zinn, *FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR MIND TO FACE STRESS, PAIN & ILLNESS* (1990); and Jon Kabat-Zinn, *WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS IN EVERYDAY LIFE* (1994) (Hereinafter, *Wherever You Go*). According to Kabat-Zinn:

Fundamentally, mindfulness is a simple concept. Its power lies in its practice and its applications. Mindfulness means paying attention in a particular way: on

extending into to the legal profession.⁴ Mindfulness refers to a quality of awareness which is focused on the present moment and is without judgment or evaluation of one's experience. It is the goal or objective of meditation or contemplative practice – the intentional practice of activities aimed at quieting the mind and cultivating the capacity for insight.⁵ Often associated with the practices of Buddhism, Taoism and yoga, a respect for the cultivation of mindfulness may be seen in mystical interpretations of Christianity as well. Further, the quintessentially American philosophy of transcendentalism associated with Emerson and Thoreau reflect the principles of mindfulness in a secular vein.⁶

Meditative practices may not only be effective in minimizing distress and dissatisfaction among law students and practitioners; indeed, they may also be counted among important *latent personal technologies for increasing our capacity to communicate with an open heart and to experience ourselves as interconnected across communities “different” from our own when our normal reactivity might otherwise tempt us to close our hearts and minds.* Meditative practices may be instrumental because they help us to accomplish the following objectives, each of which appear important in maximizing the effectiveness of integrated work: setting a tone of inclusion and respect; counteracting cognitive bias and the dissonance that comes when we find ourselves in settings which make us uncomfortable; enhancing transcultural communications; facilitating emotionally-laden discussions; enabling “holistic” learning; increasing the capacity for reflection for its own sake; enhancing the capacity for handling conflict with compassion for all parties involved; and, improving professional performance. In short, meditation may assist us in developing the capacities to be vulnerable -- to respond with an open heart, even in the face of the fear that usually keeps us clinging to the safety of denial and distance when confronting

purpose, in the present moment, nonjudgmentally. This kind of attention nurtures greater awareness, clarity, and acceptance of present-moment reality.

Kabat-Zinn, *supra* note 2, WHEREVER YOU GO at 4.

⁴ See Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers and their Clients*, 7 Harv. Negotiation L. Rev. 1, 33 (2002) (“Mindfulness has entered the legal community, too;” and describing programs and training sessions for judges, law students, mediators, and lawyers at various law firms, including Boston’s 400 member Hale and Door).

⁵ “The Meditative Perspective,” Working Group on Meditation and Law, Center for Contemplative Mind in Society, Law Program (2004), <http://www.contemplativemind.org/programs/law/pubs.html>

⁶ Kabat-Zinn, WHEREVER YOU GO at 5.

experiences different from those we ourselves have known.

Contemplative practice has helped me to deal with the day to day challenges of living as a Black woman in a world not always prepared to treat me, my reality or my experiences as worthy of full recognition and respect. The practices have assisted me in maintaining consciousness of our interconnectedness as human beings⁷, and in developing a sense of the three key capacities that characterize the sort of relational resilience⁸ we must seek:

(1) to recognize that empathy with self is the only basis for empathy across levels of stratified power⁹ and to respond to myself with kindness in moments when I feel wounded;

(2) to be mindful that speaking and listening are themselves political acts, and that try as I might my own contributions may replicate patterns of oppression and operate to wound others; and

(3) to meet with as much compassion as I can lapses in awareness in myself and in others so that I may return, again and again, to a felt understanding of the commonality of our experience as human beings.

My own research¹⁰ is beginning to provide independent confirmation that these practices may improve the well-being of each of us as lawyers -- and as human beings. They are important latent technologies for helping us deal with the identity-based anxieties that so often arise in mixed company, and the difficulties related to one another as human beings beset with conditioning across racial, gender, and sexual orientation lines. Perhaps more importantly, mindfulness training and modeling have the potential to increase our capacity for dealing with difficult truths about ourselves, for meeting our truths with compassion, and for responding more compassionately to that which we would sometimes prefer to reject in the experiences and truth-

⁷ See Rhonda V. Magee Andrews, *Racial Suffering as Human Suffering: An Existentially-Grounded Humanity Consciousness as a Guide to A Fourteenth Amendment Reborn*, 13 Temp. Pol. & Civ. Rgt. L. Rev. 891, 893-94 (2004) (describing approach “Humanity Consciousness” as characterized, in part, by commitment to seeing the one-ness of all humankind).

⁸ Maureen Walker, et al, eds., *HOW CONNECTIONS HEAL: STORIES FROM RELATIONAL-CULTURAL THERAPY* (2004) at 26, 28 (describing relational resilience as the capacity to stay in vulnerability and return to connection, and as “the ability to turn to connection in times of stress.”)

⁹ *Id.* at 45.

¹⁰ See *supra* note 1.

tellings of others in our daily lives. But please don't take my word for it: try it for yourself, and share what you find.