



## FLORIDA BAR NEWS

# MINDFULNESS AND THE LAW: THE RENEWAL OF AN OLD FRIENDSHIP

By Scott Rogers ▶ Special to the News ▶ Columns

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The legal profession's embrace of mindfulness took many by surprise. It still does.

Today's column takes a serious look at the role of mindfulness in the law and of the law's connection to mindfulness. That mindfulness practices can help enhance concentration, refine the ability to detect mind wandering, and regulate emotions amid challenging experiences, helps explain this embrace. While the profession's

interest in mindfulness is notable, it was not an early adopter. One reason for this, no doubt, is the skeptical nature of the legal mind. Another is that mindfulness can be misconstrued simply as a relaxation practice, and lawyers, like many hard-hitting, high-stakes professionals, may view relaxation as a weakness. A deeper view posits that the stereotypical lawyer role of a hired gun searching vigilantly for problems, waiting for the next shoe to drop, embedded in an arena of sharp practices and endless conflict, and perennially fearful of making mistakes, may find it threatening to press the pause, observe, and reflect button; akin to asking someone in the heat of battle to stand still.

### WHY MINDFULNESS?

So what changed? Why in the last 20 years has the legal profession oriented its collective interest toward mindfulness? It is a question that raises considerations of the law as a fundamental aspect of a civilized society, the role we lawyers play in its ongoing evolution, and the paradoxical emergence of mindfulness.

One reason is the growing body of scientific research supporting its efficacy across a range of lawyer-relevant cognitive, psychological, and physical domains. This spurred a shift of mindfulness as a touchy-feely enterprise to one of professional development and achievement. Neuroscientific reports that practicing mindfulness is associated with opportune changes to the structure and function of the brain helped satisfy the skeptical mind. I'll chime in here with my two cents, which is that as helpful and interesting as all this is, it was the slow and steady adoption of mindfulness by a growing number of

lawyers, judges, law students and law faculty, and their personal reports of its usefulness, that has sustained its relevance and growing presence. And this leads us to the heart of today's column.

## THE PARADOX OF MINDFULNESS IN THE LAW

To see more clearly what is taking place today in the area of mindfulness and the law, it can be helpful to look back to a time when there was no formal legal system. This may take you back to an undergraduate class in philosophy or political science or to a law school class with a name like Elements or Jurisprudence. Termed a state of nature, life was, as Hobbes declared, "solitary, poor, nasty, brutish, and short."

Out of the state of nature emerged the social compact whereby a portion of our individual autonomy was ceded to a sovereign who would enact and, perhaps most importantly, enforce laws. We emerged from the state of nature into a more civilized society where rights would be respected through the development of the laws of contract, property, torts, criminal law, and so on. It was a momentous expression of wisdom and compassion, likely borne out of our evolving neuroanatomy. As such, it responded to the pain and suffering that had been fundamental to daily existence for so long and established the conditions to thrive. It was an expression of mindful awareness. And who — and this is key — became the stewards of this evolved system to regulate and govern society? Chief among them were lawyers and judges. This is quite a privilege, quite a responsibility.

As much as mindfulness practice and the cultivation of greater mindful awareness points in the direction of insight, perspective, resilience, wisdom, compassion, and many other high-order attributes, one of the undeniable reasons the legal profession and academy is embracing mindfulness is because it is being increasingly viewed as a tool for mental health and well-being. This focus is clear from the cover stories of national, state, and local bar periodicals, the topics addressed at bar conferences, programs offered in law school, and services being included in bar memberships and made available to law firm members. Inspiring, poignant, and courageous efforts are being made to normalize, destigmatize, and cast a supportive embrace over all who grapple with anxiety, depression, substance abuse, and self-destructive thoughts and actions. And because these are, as much as anything else, the tell-tale signs of being human — experienced along a gradient that we can each recognize within ourselves in one form or

another — we are all in this together. And this is resembling more and more the very state of nature out of which the system of law emerged: “solitary, poor, nasty, brutish, and short.”

So, what are we to do? Here comes the paradox, and a sad irony. . . and a cause for hope. We find ourselves today a profession that is succumbing to the pressures and challenges that were the very symptoms out of which our profession emerged in the first place. Might this is be a moment in time that will inspire us to inhabit even more fully our stewardship of the rule of law through the renewed embrace of each of ourselves as fellow human beings and members of a noble profession?

### MINDFULNESS PRACTICE AS A TOOL FOR MENTAL HEALTH AND WELL-BEING

The conflict rich environments in which we work can be immensely stressful. The uncertainty, fear, and confusion our clients may face, coupled with the traumas they experience, can lead to our succumbing to vicarious trauma and compassion fatigue. The intense workload, combative nature of our interactions, and 24/7 lives can compromise not only the quality of our work, but our capacity to treat each other with respect, listen deeply and communicate effectively, and engage in much needed self-care. This can contribute to heightened anxiety, rumination and depression, and burnout. Much has been written about the potential role of mindfulness training programs to help with many of these concerns, and of mindfulness insights and practices to provide relief from the many physical, emotional, and cognitive challenges we face. Mindfulness is by no means the only path to support our individual and collective efforts to navigate this harsh terrain. It does carry a quality of being finely tuned to the mission, broadly applicable and accessible. Importantly, as we care for and support each other though challenging times, personally and professionally, let us also not forget the central offering of mindfulness, and of the law — the cultivation of wisdom and compassion. If not now, when? If not us, who?

If you have a question about mindfulness and integrating it into the practice of law that you would like answered in this column, send it to [srogers@law.miami.edu](mailto:srogers@law.miami.edu).



*Scott Rogers, M.S., J.D., is a nationally recognized leader in the area of mindfulness in law and founded and directs the University of Miami School of Law's Mindfulness in Law Program where he teaches mindful ethics, mindful leadership, mindfulness and negotiation, and mindfulness in law. He is the creator of Jurisight, one of the first CLE programs in the country to integrate mindfulness and neuroscience and conducts workshops and presentations on the role of mindfulness in legal education and across the legal profession. He is author of the recently released, **"The Mindful Law Student: A Mindfulness in Law Practice Guide,"** written for all audiences.*