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THE MINDFUL LAWYER: 'YOU CAN'T CHANGE THE WAVES BUT YOU CAN LEARN TO SURF'

By Scott Rogers ▶ Special to the News ▶ Columns

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The law is, by its very nature, adversarial. We lawyers have chosen a profession that calls on us to move into situations riddled with conflict. And each time we do our job and move on to the next matter, we re-enter the theater of what many regard as “modern day” warfare. As Judge Alan Gold has written in his eloquent discussions of the practice of law, all too often this can generate extreme stress, lead to less civil interactions among members of the profession, lower job satisfaction, and increase serious health concerns.

It is unlikely that levels of civility and fair play will change much anytime soon. And, for that matter, it may be difficult to discern the more subtle distinctions between bad conduct and effective lawyering, especially in highly charged and consequential matters. The saying “You can’t stop the waves but you can learn to surf,” is instructive and points to an important mindfulness insight. To surf the wave, it is helpful to see it clearly and not make it bigger than it is. In the landscape of legal practice, it can be challenging to disentangle aggressive and even bad behavior, as a tactic, *from a personal assault* — even if it looks and sounds personal. Agitated and hostile conduct can be challenging enough to skillfully respond to, let alone when we construct a narrative that turns our client’s battle into our own. Often without realizing it, we can be pulled into the mud-slinging, justifying our questionable conduct because we didn’t start it, or because we are “right.” And because a great many lawyers have good intentions and the waves of agitation can rise up quicker than we realize, good attorneys can inadvertently contribute, even if modestly, to the very conditions about which they complain.

This week’s question is one that many likely will relate to and seeks guidance on how mindfulness practice may be useful in navigating such challenging situations:

I am pretty good with the craft and business of the law, as I enjoy problem solving, people, and hard work. I also enjoy the intellectual and emotional sparring that, to me, is the essence of the adversarial process

and zealous representation. What I have great difficulty with are the personal attacks, angry outbursts, and hostile and threatening emails that seem to be an almost everyday experience. Part of me gets sucked into the slime, and part wants nothing to do with the profession. I want to figure out a better way and wonder how mindfulness might be helpful.

I posed this question to Debi Galler, general counsel to Green Street Power Partners, and a longtime mindfulness practitioner. Debi replies:

What a great question. So often we get drawn into our opponent's drama or bad behavior, and it can put us off our own game. When we get drawn into this drama our brain tends to "shut off" and we react (or more likely over-react) to the situation. This is often counterproductive to what we are trying to achieve for our client, and can take the fun out of the profession we love so much. This also often results in a downward spiral between us and our opponent and is, I think, the "getting sucked into the slime" you mention. To make matters worse, we can take things personally and quickly move into a "fight or flight" mode, which not only can feel threatening but can impair decision making.

The daily practice of mindfulness can help us become more skillful with sizing up what's at play, being less emotionally affected, and not losing sight of the larger perspective. But in moments of extreme drama, it can be helpful to be able to draw upon a short mindfulness practice. What mindfulness can help us do is offer us a larger set of responses in these moment (called "response flexibility"). One such response that many find especially helpful is to pause before we (re)act. With increased response flexibility, when confronted with a strong emotional stimulus we give ourselves space (a larger perspective, less emotional agitation) and with that space we have greater freedom to choose our response.

How do we increase this space between stimulus and response? One method I find especially helpful is becoming more conscious of the breath — one, two, or 10. It can be helpful to begin the process with a slower, deeper breath as this can help tone down agitation. With each breath, we practice paying attention to sensations of breathing and when our mind wanders, which it will, gently bringing it back, without judgment. If you have time for only a few conscious breaths, you may find this helps, even if but a little. And if you have the time to practice in advance of what may likely become a challenging and

stressful encounter, it may prove to be a helpful inoculation. And, just like strengthening our muscles at the gym, it takes practice to train our brains in this way. However, with practice comes the ability to increase our response flexibility, which in turn will help us respond more effectively and with less emotional reactivity. You may find that you avoid getting mired in the slime. When you respond with a measured approach it may also stop your opponent's downward spiral, and you may find you have less negative interactions and more frequently find joy in the practice of law.

Debi's response is an important reminder of both the formal mindfulness practice, that can be done on a regular basis, and the short/informal practices that can be engaged in the span of a few breaths.

Importantly, while the breath is a powerful agent on our well being, and deliberately engaging it can create a calmer state to re-engage, it is the awareness that is being cultivated through these practices that enables us to maintain a larger perspective and see more clearly what is actually taking place. Thank you, Debi, for taking time to respond to this month's mindfulness inquiry.

If you have a question about integrating mindfulness into the practice of law that you would like answered in this column, send it to 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.*