

**THE iMINDFUL LAWYER:  
MINDFULNESS LAW PRACTICE IN A DIGITAL AGE**

Mindfulness in Law - LAW513A (Fall 2012)  
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**I. Introduction**

Effective lawyering involves the ability to deliberately focus on a given matter and find resolution through clear, cogent reasoning.<sup>1</sup> The requisite clarity is most efficiently attained

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<sup>1</sup> See e.g., Robert D. Rachlin, *Seven Habits of Effective Lawyers*, 33 Vt. B.J. 1, 4 (2007), available at <http://www.docstoc.com/docs/93279633/Seven-Habits-of-Effective-Lawyers> (explaining that by mastering one’s ability to pay close attention-to-detail, lawyers refine the ability to think clearly and logically).

when the lawyer is able to exercise emotional competence.<sup>2</sup> Attorneys that do not learn to cultivate emotional competence undoubtedly face a career full of unnecessary discord and stress.<sup>3</sup> The practice of mindfulness can help a lawyer discover how to react positively to their sporadic thoughts and emotions.<sup>4</sup> This is because the mindful lawyer learns to notice those thoughts that enter into the mind and trigger the emotions that influence subsequent reactions.<sup>5</sup> Through this practice, lawyers are better positioned to channel their reactions in constructive, non-dysfunctional ways.<sup>6</sup>

Due to the legal profession's mandate that lawyers "stay connected,"<sup>7</sup> technology has the potential to continuously distract the mindful lawyer, thus triggering a bombardment of thoughts,

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<sup>2</sup> Emotional competence is the ability to recognize and constructively respond to one's emotions such that they do not contribute to dysfunctional behavior. See Terry A. Maroney, *Emotional Competence, "Rational Understanding," and the Criminal Defendant*, 43 AM. CRIM. L. REV. 1375, 1400-08 (2006); see also Marjorie A. Silver, *Emotional Competence and the Lawyer's Journey*, in THE AFFECTIVE ASSISTANCE OF COUNSEL 5, 13 (Marjorie A. Silver ed., 2007). If not mastered, emotions threaten to "derail optimal perception, understanding, reasoning, and communication, [and] may override one's otherwise preferred choices." Maroney, *supra* at 1408. Scholars have recognized a distinct correlation between the ability to harness the power of the emotional control and good lawyering. Silver, *supra* note at 13.

<sup>3</sup> See generally DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ (Bantam Books 10th ed. 2005).

<sup>4</sup> See Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, in THE AFFECTIVE ASSISTANCE OF COUNSEL 447, 449 (Marjorie A. Silver ed., 2007) (explaining that mindfulness frees us "from habitual ways of perceiving and acting").

<sup>5</sup> Evan M. Rock, *Mindfulness Meditation, the Cultivation of Awareness, Mediator Neutrality, and the Possibility of Justice*, 6 CARDOZO J. CONFLICT RESOL. 347, 349 (2005) (explaining that mindfulness meditation enhances "the ability to recognize thoughts and emotions as they arise"); see also Mark D. Killian, *Mindfulness Program Aims to Help Law Students Live in the Moment*, THE FLA. BAR NEWS (Nov. 1, 2009), available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/4d8f4e34f54fa1ea85257657006e7624!OpenDocument> (quoting Professor Scott Rogers who explains that "[m]indfulness is the practice of becoming more fully aware of the present moment—nonjudgmentally and completely").

<sup>6</sup> See J. Patton Hyman, *The Mindful Lawyer: Mindfulness Meditation and Law Practice*, 33 VT. B.J. 40, 43 (2007), available at <http://www.docstoc.com/docs/37831064/The-Mindful-Lawyer-Mindfulness-Meditation-and-Law-Practice> (explaining that mindful lawyers avoid unnecessary resistance because they learn to control their reactions, even under highly emotional situations).

<sup>7</sup> See Jeffrey Allen, *Road Warrior: Technology for the Mobile Lawyer in All of Us*, GPSOLO (Nov. 2012), available at [http://www.americanbar.org/publications/gp\\_solo/2012/november\\_december2012privacyandconfidentiality/road\\_warrior\\_technology\\_mobile\\_lawyer\\_all\\_us.html](http://www.americanbar.org/publications/gp_solo/2012/november_december2012privacyandconfidentiality/road_warrior_technology_mobile_lawyer_all_us.html) (explaining that "lawyers must employ technology to function successfully in today's world").

emotions, and reactions, all of which negatively impact cogent reasoning.<sup>8</sup> From moment to moment, lawyers are expected to expeditiously reply to oral and written communications, frugally maintain client billing records, and efficiently conduct case research.<sup>9</sup> More and more, these contemporary legal tasks are becoming inextricably intertwined with technology because technology is seen as having the faculty to satisfy the immediately-demanded results.<sup>10</sup>

Traditionally, and in response to the overwhelming nature of these technology-induced distractions,<sup>11</sup> some scholars advocate the need to diminish, or eradicate, perceived negative influences of technology in order to foster a mindful awareness.<sup>12</sup> However, my thesis is that as technology continues to increasingly impact the legal profession, the mindful lawyer can—and in many ways, needs to—coexist with technology. For lawyers to successfully navigate the challenges of the digital age, it requires a deliberate decision “to be” mindful and with technology.

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<sup>8</sup> See Lauren Bacon, *Embodied Experiences, Mindfulness, and Technology*, CURIOUS FOR A LIVING TECH. BLOG (Oct. 18, 2012), <http://www.laurenbacon.com/embodied-experiences-mindfulness-and-technology/> (suggesting that we all, even mindfulness practitioners, “wrestl[e] with how to navigate the landscape of on- and off-line living”).

<sup>9</sup> These are but a few of the technological tasks that demand immediacy on lawyers. See Jerome Kowalski, *Lawyers Beware: Your Job May be Replaced by a Computer*, JDSUPRA (Mar. 8, 2011), available at <http://www.jdsupra.com/legalnews/lawyers-beware-your-job-may-be-replace-66562/> (predicting that emerging legal software is outpacing the lawyer in handling e-discovery requests and recommending that law schools train students on prevalent computer software applications); Herman J. Russomanno, *How to Avoid Being a Target of a Malpractice Case: Level the Playing Field with Great Communication and Accountability with Your Clients*, in ATLA 2002 WINTER CONVENTION REFERENCE MATERIALS 381, 381 (Ass’n Trial Laws. Amer. 2002) (proposing that technology has conditioned clients to “demand instant gratification”).

<sup>10</sup> See Fredric I. Lederer, *Courtroom Technology: For Trial Lawyers, the Future Is Now*, 19 Crim. JUST. 1, 6 (2004) (admitting that courtroom practitioners “agree that evidence presentation technology” diminishes trial time by thirty to fifty percent).

<sup>11</sup> At the turn of the century, the American Bar Association (“ABA”) released a study that investigated the legal community’s response to the “growing dependence on technology.” See THE PULSE OF THE PROFESSION 32 (A.B.A. 2000). The study cited that lawyers generally felt overwhelmed by the speed to which technology was changing, the inability to disconnect from work, and the pressure of the expectation of immediacy. *Id.*

<sup>12</sup> See CARL HORN III, LAWYERLIFE 102 (A.B.A. 2003) (suggesting that one strategy of dealing with technology is to “take the phone off the hook”); Nancy A. Werner, *Be Still and Listen Mindfulness for Lawyers*, 91 MICH. B.J. 52, 53 (2012) (proposing that we “[g]et away from technology and allow [the] head to clear”).

iMindfulness is the integration of technology into the practice of mindfulness.<sup>13</sup> The evolution of the iMindful lawyer<sup>14</sup> involves a transition from the technological neophyte, who is undone by technological distractions, to the tech savvy lawyer who recognizes that technology “just is”<sup>15</sup> and intentionally decides “to be” with it. In Part II of this article, I will introduce the first step in the evolution—the decision “to be” a mindful lawyer—and how it impacts every decision that follows in the journey to becoming iMindful. Part III inspects the trajectory of technology in the digital age, how it transforms the legal profession, and the necessity for the twenty-first century attorney to decide to adapt to the times. Finally in Part IV, we explore this new concept of iMindfulness—the next phase in legal adaptation—why it is especially crucial to the practice of law, and how to navigate the digital age as a mindful lawyer.

## II. “To Be” a Mindful Lawyer

### A. The Decision “To Be” Mindful

Decision-making is a critical skill for legal professionals because the day-to-day is riddled with expectations from our clients, bosses, and colleagues based on our ability to think clearly, objectively, and strategically.<sup>16</sup> Whether we accept it or not, cultivating our thoughts and

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<sup>13</sup> iMindfulness promotes awareness through the deliberate and non-judgmental use, or non-use, of technology, from moment to moment. iMindfulness recognizes that technology is increasingly becoming an integral component of our way of life and seeks to serve as a tool for us to be completely present in the digital age and ultimately improve quality of life.

<sup>14</sup> An iMindful Lawyer uses technology to facilitate the practice of mindfulness in an effort to bring presentism into the practice of law. The concept is to negate judgments associated with the need for lawyers to stay connected and technologically savvy and to discourage any subsequently dysfunctional reacts.

<sup>15</sup> “Just Is” is a termed that signifies acceptance of the moment as we find it, without seeking to alter it but simply to notice it. See *Silence as Acceptance*, JURISIGHT.COM, [http://jurisight.com/silence\\_as\\_acceptance.html](http://jurisight.com/silence_as_acceptance.html) (last visited Jan. 12, 2013).

<sup>16</sup> See e.g., Steven A. Lauer, *Think Strategically—Plan!*, A.B.A. 1, 7 (2006), [http://apps.americanbar.org/intlaw/calendar/spring2006/papers/THURS9451100BOSI\\_538.doc-10k-2009-03-11](http://apps.americanbar.org/intlaw/calendar/spring2006/papers/THURS9451100BOSI_538.doc-10k-2009-03-11) (last visited Oct. 8, 2012) (explaining that the implementation of a strategic plan is critical to the success of a law department).

emotions is penultimate in our ability to successfully navigate the legal decision-making process because when our thoughts and emotions go unchecked they tend to run rampant such that they negatively impact our reasoning.<sup>17</sup> Lawyers simply cannot afford to sacrifice their legal logic and critical thinking skills to untamed emotions because to do so undermines the lawyer's contribution to the profession.<sup>18</sup> Mindfulness provides the mechanism through which we can bring awareness to the thoughts and emotions, both positive and negative, that arise and consequently hinder our ability to make clear choices.<sup>19</sup>

Mindfulness is the practice of “paying attention on purpose in the present moment and non-judgmentally.”<sup>20</sup> Paying attention on purpose forces us to be purposefully aware, meaning that our awareness extends beyond just knowing when we feel anxious, for example. The task involves noticing what thoughts trigger feelings of anxiety, recognizing the bodily sensations that manifest, and understanding our natural reactions to the stimuli.<sup>21</sup> The benefit of the ability to be purposefully aware is that it encourages us to react purposefully.<sup>22</sup>

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<sup>17</sup> See Karyn Hall, *Learning to Trust Yourself through Mindfulness*, PSYCH CENT., <http://blogs.psychcentral.com/emotionally-sensitive/2012/07/learning-to-trust-yourself-through-mindfulness/> (last updated July 14, 2012) (illustrating how mindfulness may be used to weather the emotional storms, which may yield unpredictable reactions).

<sup>18</sup> Critical thinking skills are deemed the lawyer's ultimate tool. See Ruggero J. Aldisert, *LOGIC FOR LAWYERS* 14 (Nat'l Inst. for Trial Advoc. 3d ed. 2001). The absence of critical thinking skills would lead to a corrupt legal culture because unsubstantiated rhetoric would replace sound arguments. See Guido Pincione, *Critical Thinking and Legal Culture*, in *PERSPECTIVES IN MORAL SCIENCE* 374, 385-86 (Michael Baurmann & Bernd Lahno eds. 2009).

<sup>19</sup> Mindfulness allows us to be present in the moment and to realize a non-imposing awareness of our thoughts and emotions. Jon Kabat-Zinn, *MINDFULNESS FOR BEGINNERS* 25 (Sounds True iBooks ed. 2011). When we employ purposeful awareness, “it is possible for the next moment to be hugely and creatively different[.]” *Id.*

<sup>20</sup> Kabat-Zinn, *supra* note 19, at 26.

<sup>21</sup> Hyman, *supra* note 6, at 40 (explaining that mindfulness meditation helps the practitioner become “familiar with the contents of the mind and their patterns”).

<sup>22</sup> See Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 *UMKC L. REV.* 535, 539 (2011) (explaining that mindfulness “assist[s] people in being more deeply present and capable of choosing their responses to stimuli in their environments”).

Paying attention in the present is the foundation of “being” because we can only “be” in the present. The mind, in its natural state, wanders.<sup>23</sup> When it wanders, it most commonly unearths thoughts that linger from the past or channels predictions of uncontrollable future events.<sup>24</sup> In either case, preoccupation with the past or the future inhibits our ability to deal with the present.<sup>25</sup> Mindfulness helps us notice those non-present thoughts and corral them such that they do not interfere with our sense of presentism, thus allowing us “to be” in the moment.<sup>26</sup>

Finally mindfulness beckons us to be nonjudgmental.<sup>27</sup> The mindfulness practitioner does not replace thoughts with opinions, but simply accepts that which is. As thoughts arise, we notice them. We are unconcerned with whether they are good or bad. Instead, we remain curious to see them for what they are.<sup>28</sup> Consequently, acceptance functions to curtail the manifestation of premature emotions and undesirable reactions.<sup>29</sup>

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<sup>23</sup> Dennis M. Warren, *Eyes Wide Open*, 62 OR. ST. B. BULL. 15, 17 (2002) (cautioning new practitioners of the difficulties of resisting a wandering mind).

<sup>24</sup> See Robert Zeglovitch, *The Mindful Lawyer*, 70 Tex. B.J. 234, 235 (2007).

<sup>25</sup> Kirk Warren Brown & Richard M. Ryan, *Perils and Promise in Defining and Measuring Mindfulness: Observations from Experience*, 11 CLINICAL PSYCHOL.: SCI. & PRAC. 242, 244 (2004) (explaining that the “mind can become easily lost in thought, mental images, or emotions without the power of sustained attention to keep one attuned to present experience”). The bulk of the energy spent when the mind wanders is on past or future events. Zeglovitch, *supra* note 24, at 235.

<sup>26</sup> Mindfulness employs presentism, or the notion that the past and future are simply conceptualized mental constructs, to mitigate reactions to negative emotions. See generally Kirk Warren Brown & Richard M. Ryan, *The Benefits of Being Present: Mindfulness and Its Role in Psychological Well-Being*, 84 J. PERSONALITY & SOC. PSYCHOL. 822 (2003).

<sup>27</sup> Brian L. Thompson & Jennifer A. Waltz, *Mindfulness, Self-Esteem and Unconditional Self-Acceptance*, 26 J. RATIONAL-EMOTIVE & COGNITIVE BEHAV. THERAPY 119, 120 (2008) (explaining that “[m]indfulness involves adopting an attitude of non-judgment towards the moment-to-moment unfolding of one’s experience”).

<sup>28</sup> Zeglovitch, *supra* note 24, at 236 (stressing the point that mindfulness fosters an environment of acceptance).

<sup>29</sup> See 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, 29 (2002) (“[A] non-attached, non-judgmental perspective can also help us respond more appropriately to situations . . . rather than reacting in habitual ways.”); Thompson, *supra* note 27, at 120 (noting that having a non-judgmental attitude “allows one to become less reactive to and more accepting of one’s immediate experience”).

Together, these three elements capture the true essence of mindfulness, which is “to be.”<sup>30</sup> Thus, subscribing to the practice of mindfulness requires one to commit “to be” purposefully, “to be” in the present, and “to be” non-judgmental. Then, and only then, are we ready to welcome the “friendly gesture towards ourselves in which we take time simply to be[.]”<sup>31</sup>

## B. Mindful Lawyering

Practicing mindfulness in the legal field simply makes sense. Lawyers are constantly and consistently bombarded with stressors that beg for the type of relief that mindfulness can provide.<sup>32</sup> The practice of law is largely based on an adversarial system, which is riddled with deadlines and consumed with winning.<sup>33</sup> Clients are often demanding, have unrealistic

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<sup>30</sup> The practice of mindfulness shifts our mindset from a place of doing to a place of being. Kabat-Zinn, *supra* note 19, at 27. Once this shift occurs, we start to do things intentionally, which makes “our doing . . . come out of our being[.]” Kabat-Zinn, *supra* note 19, at 28.

<sup>31</sup> Michael Carroll, *AWAKE AT WORK* 221 (Shambhala Publ’ns 2004).

<sup>32</sup> Many legal professionals have recognized that mindfulness is a viable tool for reducing the stress that is attributable to their law experiences. See Diane Curtis, *Meditation: A New Practice for Lawyers*, CAL. B.J. (Jan. 2011), <http://calbarjournal.com/January2011/TopHeadlines/TH2.aspx> (reporting that approximately “200 lawyers, law students, judges and law professors [attended] . . . the first-ever national conference on the legal profession and meditation” held at Berkley University in the fall of 2010); Scott Rogers, *Mindfulness and the Law Student*, THE MINDFUL LAW STUDENT, <http://themindfullawstudent.com/Home.html> (last visited Dec. 12, 2012) (promoting mindfulness in the law school setting); *The Law Program Overview*, CTR. FOR CONTEMPLATIVE MIND IN SOC’Y, <http://www.contemplativemind.org/programs/law> (last visited Dec. 2, 2012) (advertising the center as having organized three dozen mindfulness events for lawyers, judges, mediators, law professors and students between 1998 and 2011).

<sup>33</sup> See Andrew Jay Graham, *The Significance of Civility*, 36 MD. B.J. 25, 26 (Sept. 2003) (asserting that the legal system is “inherently adversarial”); Pearlette J. Ramos, *Arizona Attorneys: Happier Than You Think*, 49 ARIZ. ATT’Y 22, 26-28 (Nov. 2012) (contributing the adversarial system, deadlines, and winning to the “stressful nature of law practice”); Timothy C. Day, *The Practice and the Profession*, WYO. LAW. 1, 4 (June 2002) (claiming that “the practice of law has become too adversarial”); Maeda Riaz, *The Healthy Lawyer: Stress Management*, MSJD.ORG (Mar. 15, 2012 1:38 PM), <http://ms-jd.org/healthy-lawyer-stress-management> (claiming that “the adversarial nature of law practice arguably makes it one of the more stressful professions”); Rebecca Nerison, *Lawyers: Find Freedom from Anger, Anxiety and Stress*, N.M.B. 1, 1, <http://www.nmbar.org/attorneys/LAP/Freedom%20from%20Anger%20and%20Stress.pdf> (last visited Dec. 10, 2012) (noting that lawyers are “[c]onstantly judge[d] in terms of winning and losing”); *Why is Law So Stressful?*, FUTUREVISIONS, [http://www.futurevisions.org/law\\_crr\\_stress\\_more.htm](http://www.futurevisions.org/law_crr_stress_more.htm) (last visited Dec. 2, 2012) (explaining that the adversarial system contributes to the level of stress in the legal profession).

expectations of success, and are rarely prepared to pay for services rendered.<sup>34</sup> Furthermore, career progression can be unpredictable, highly-dependent upon uncontrollable circumstances, subject to less-than-professional behavior of others, and compromised by the lack of reported billable hours.<sup>35</sup> If you add in the lack of work/life balance, it is unsurprising that a significant number of lawyers wrestle with substance abuse, health issues, and marital problems.<sup>36</sup>

The decision to be a mindful lawyer, is a step in a positive direction towards evading many of the aforementioned issues. It means bringing all of the tenants of mindfulness into the daily practice of law, or in other words, being purposefully and non-judgmentally present when faced with the various stressors of the legal profession. To illustrate, the mindful lawyer recognizes his thoughts and emotions that arise during adversarial situations, highlighted by a

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<sup>34</sup> See Hughie D. Hunt II et al., *Law Office Economics, Management, and Fees*, 1 PRAC. MANUAL FOR THE MD LAW. 1-5 (2008) (explaining that clients are not willing to pay without tangible proof of how the lawyer spent time working on a matter and unappreciative clients do not pay on time, if they pay at all); See WIS. STATE BAR, THE NEW NORMAL: THE CHALLENGES FACING THE LEGAL PROFESSION 2 (2011), available at <http://www.wisbar.org/AM/Template.cfm?Section=InsideTrack&Template=%2FCustomSource%2FInsideTrack%2FcontentDisplay.cfm&ContentID=111479> (urging that lawyers must become more flexible when setting up fee arrangement because increasingly clients are “demanding predictable fees”); see also Becky Bye, *Speedy Resolution Serves Clients’ Best Interests*, 39 COLO. LAW. 59, 60 (2010) (explaining that “[w]hen the legal process frustrates the clients’ expectations for a speedy resolution to the problem, they redirect their frustration and resentment toward their attorneys and toward the legal profession”); Ramos, *supra* note 33, at 25 (discussing the stress of working with clients).

<sup>35</sup> See Diane Vogt & Lori-Ann Rickard, *Developing a Challenging and Successful Law Career*, FLA. B. NEWS, Feb. 1, 2004, at 26 (asserting that low attrition rate among lawyers within the first five years of practice are tied to misplaced exceptions); Ramos, *supra* note 33, at 26 (explaining that billable hours and long work hours are among the everyday stressors in the legal profession).

<sup>36</sup> Historically, statistics have revealed that up to eighty percent of bar disciplinary actions are attributable to some form of substance abuse. Benjamin Sells, *Facing the Facts About Depression in the Profession*, FLA. B. NEWS, Mar. 3, 1995, at 34. These studies suggest that the stress the legal workplace is correlated to the choice to excessively imbibe and/or use drugs. See George H. Hettrick, *Addiction to Alcohol and Other Drugs: Recognizing the Signs of Lawyer Impairment*, B. EXAMINER, Aug. 1999, at 32 (explaining that the lawyer’s denial of dissatisfaction in the workplace often leads to substance abuse); Patrick J. Schiltz, *On Being A Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 876 (1999) (discussing the results of two independent state bar studies that propose a substance abuse problem in the profession). The same studies indicate that at least one in four attorneys experience depression, anxiety, or other forms of mental health distress. See Hettrick, *supra*; see also Schiltz, *supra* (noting that the studies substantiate a finding that the lawyers are “operating at extremely high levels of psychological distress”). Lawyers also have “an alarmingly high rate” of “stress-related health conditions. Zeglovitch, *supra* note 24, at 236. Coincidentally, lawyers also have a higher divorce rate in comparison with other professions. See WALT BACHMAN, LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION 22 (Four Directions Press 1995); Schiltz, *supra*, at 878.



clenched jaw or spontaneous upper-back tension, and defuses them in a constructive manner.<sup>37</sup>

She exploits each drifting thought as an opportunity to breathe, and custom fits each reaction in such a way that it contributes to meeting her intended goals.<sup>38</sup> The mindful lawyer is an impartial witness, who does not become entangled in categorizing experiences based on past conditioning.<sup>39</sup> Instead, she fosters a non-judgmental approach, which helps her to make intentional and functional choices.<sup>40</sup>

The awareness that a lawyer gains through the practice of mindfulness better prepares him to deal with the unexpected, effectively interact with others, and bring precision to his work product. The mindful lawyer decides how to best exploit his thoughts and emotions, choosing to factor them into, or exclude them from, his decisions. Still, before the mindful lawyer can fully embrace genuine presentism, he or she must make the decision “to be” non-judgmentally present for all thoughts and emotions, especially those inextricably intertwined with the practice of law.

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<sup>37</sup> In mindfulness practice, one way of being present is to notice the thoughts, feelings, and emotions that arise and also to become attune to the bodily sensations that occur from moment to moment. Dyan Williams, *The Practice of Being Mastering Stress & Finding Meaning As A Lawyer*, BENCH & B. MINN., Mar. 2010, at 26, 27.

<sup>38</sup> One of the more universal mindfulness techniques involve bringing attention to the breath. Steven Goodheart, *Mindfulness of Breathing*, METTA REFUGE (Feb. 8, 2010), <http://mettarefuge.wordpress.com/2010/02/08/mindfulness-of-breathing-a-short-teaching-by-thich-nhat-hanh/>. Breathing has a rejuvenating characteristic because it allows the person to take notice of each moment as if it were the first. See Thich Nhat Hanh, *A Short Teaching on Mindfulness of Breathing*, METTA REFUGE (Feb. 8, 2010), <http://mettarefuge.wordpress.com/2010/02/08/mindfulness-of-breathing-a-short-teaching-by-thich-nhat-hanh/> (articulating the cyclical nature of the breath). While breathing connects us to the present, it also implicates a sense of purposefulness because we must assertively let thoughts pass and, without resistance, return our mind to where we want it to be—on the breath. See *id.*

<sup>39</sup> See John P. Forsyth, *Getting Unstuck With Mindfulness Practice*, PEACE OF MIND BLOG (Mar. 31, 2011), <http://www.psychologytoday.com/blog/peace-mind/201103/getting-unstuck-mindfulness-practice> (describing the author’s experience in which he caught his mind exploring past events shortly after beginning to evaluate and judge his own thoughts).

<sup>40</sup> Approaching situations non-judgmentally enables the mindful lawyer to accept situations for what they are. See JON KABAT-ZINN, *WHEREVER YOU GO THERE YOU ARE* 4 (Hyperion 10th ed. 2005). Once the lawyer has a sense of acceptance, unreliable gut reactions concede to sound and cogent reasoning. See *id.*

### III. “To Be” with Technology

“In the beginner’s mind there are many possibilities, but in the expert’s there are few.”<sup>41</sup>

— Zen Master Shunryo Suzuki

Once the legal professional decides to practice mindfulness, he essentially decides to release himself from the confines of his own preconceived notions and judgments. This allows the mindful lawyer to constantly explore the world with new eyes, unthreatened by what is expected to come. Because each moment is intentionally a new experience, distractions and stressors are reduced to noticeable occurrences, awaiting disposition.

Some scholars, however, suggest that the threat of technology inhibits one’s ability to be present for the moment.<sup>42</sup> One school of thought asserts that technology contributes to psychological dysfunction by promoting feelings of anxiety while simultaneously preventing the individual from recuperating from those anxious feelings.<sup>43</sup> Another argument is that digital devices fatigue the mind, distract one’s attention, and/or inhibit brain function, and therefore, the individual who succumbs to technology loses the capacity to be focused and deliberate.<sup>44</sup>

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<sup>41</sup> See David Chadwick, *Beginner’s Mind*, CROOKED CUCUMBER, <http://www.cuke.com/Cucumber%20Project/lectures/srl%20la%20beginners%20mind.html> (last visited Dec. 12, 2012) (quoting Zen Master Shunryo Suzuki’s from a lecture titled, “Beginner’s Mind” on Nov. 11, 1965). Beginner’s mind is a concept that entails freeing the mind of preconceptions and prejudices so that we may witness each moment just as they are. See generally, SHUNRYU SUZUKI, *ZEN MIND, BEGINNER’S MIND* (Shambhala Publ’ns 2006).

<sup>42</sup> See Elisha Goldstein, *Is It Time to Unplug? Technology and Overconnection*, MINDFULNESS & PSYCHOTHERAPY BLOG (Mar. 4, 2009), <http://blogs.psychcentral.com/mindfulness/2009/03/are-you-overconnected/> (asserting that technology has the potential to “take us away from a critical element of life . . . simply being present to life”).

<sup>43</sup> See *id.* (suggesting that the anxiety built up by forfeiting time with oneself for time on technological devices exacerbates the anxiety because it is the alone time that allows the individual to lower stress).

<sup>44</sup> See Matt Richtel, *Your Brain on Computers: Digital Devices Deprive Brain of Needed Downtime*, N.Y. TIMES, Aug. 25, 2010, at B1 (reporting that while people use digital devices to become more productive, they are fatiguing themselves and becoming less productive);

The remedy for these proposed negative effects of technology has consistently been based upon a strategy of segregation.<sup>45</sup> Instead of dealing with technology as it “just is,”<sup>46</sup> some proponents of this debate argue for the need to resist assimilation with technology.<sup>47</sup> But for today's lawyer, this may not be practical. The justice system is premised on efficiency and speed.<sup>48</sup> Courts expect motions to be filed timely.<sup>49</sup> Clients want results yesterday.<sup>50</sup> Partners expect associates to be available around the clock.<sup>51</sup> The system is set up such that the lawyer, even a mindful one, must “stay connected,” because technology provides that capacity to be optimally speedy and efficient. Only with technology will the astute lawyer be able to meet these pressing demands and stay competitive in the legal market.<sup>52</sup> Therefore, I advocate that the lawyer who evolved to become a mindful lawyer continues on the journey to becoming a more

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<sup>45</sup> See *supra* text accompanying note 12; see also Christie Sprowls, *What Is Your Self-Care Plan?*, 73 TEX. B.J. 656, 658 (2010) (recommending as part of a self-care plan “to completely disconnect from technology”); Goldstein, *supra* note 42 (making the suggestion that we “unplug . . . from time to time”); Richtel, *supra* note 44, at B1 (advocating that downtime should be spent doing anything not involving a digital device).

<sup>46</sup> The miracle of mindfulness happens when you do not make an effort to stop preconceptions and judgments from invading your thoughts. See Thich Nhat Hanh, *On the Practice of Mindfulness*, SHAMBHALA SUN (Mar. 2010), [http://www.shambhalasun.com/index.php?option=com\\_content&task=view&id=3490&Itemid=0](http://www.shambhalasun.com/index.php?option=com_content&task=view&id=3490&Itemid=0). At that moment, the practice of mindfulness provides an opportunity to “be here for life as it just is[.]” See Scott Rogers, *Discussion and Overview of the “Just Is” Homes Exercise*, MINDFULNESS IN LAW, <http://mindfulnessinlaw.com/DCBA1203.html> (last visited Nov. 30, 2012).

<sup>47</sup> See generally Martin Wolf et al., *Mindfully Resisting the Bandwagon: Reconceptualising IT Innovation Assimilation in Highly Turbulent Environments*, 27 J. INFO. TECH. 213, 213-15 (2012).

<sup>48</sup> See FED. R. CIV. P. 1 (establishing that one of the premier purposes of the rules of civil procedure is to promote speed).

<sup>49</sup> See generally Sofia Salazar-Rubio, *Preparing for Your Day in Court*, KING CNTY. (Oct. 2010), <http://your.kingcounty.gov/kcsc/docs/yuhandbook.pdf> (explaining the expectation of timely filing and penalties for non-compliance).

<sup>50</sup> See Bye, *supra* note 34, at 60 (explaining that many clients expect resolution to their issues as soon as possible).

<sup>51</sup> See Linda Green Pierce, *Lessons for a Third-Year Associate*, N.W. LEGAL SEARCH, <http://www.nwlegalsearch.com/content.cfm/ID/53> (last visited Nov. 30, 2012) (devoting three of nine recommendations to keeping the lines of communication open and working long hours)

<sup>52</sup> See Allen, *supra* note 7 (claiming that lawyers who resist technology will find it increasingly difficult to stay competitive).

effective attorney. Furthermore, I propose that “being” with technology is not a negative consequence of the profession, if the choice “to be” with technology is intentional.

For adaptation to occur, it is critical that lawyers take into account that technology is integral to today’s practice of law.<sup>53</sup> Technological advances are occurring at 4G LTE speed<sup>54</sup> and have infiltrated almost every aspect of today’s law practice.<sup>55</sup> Lawyers are expected to use the latest communication devices and computer software applications.<sup>56</sup> Lawyers are also expected to be technologically savvy, especially when safeguarding communications transmitted via satellite and fiber-optics.<sup>57</sup>

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<sup>53</sup> See Emily J. Gould, *The Empathy Debate: The Role of Empathy in Law, Mediation, and the New Professionalism*, 36 VT. B.J. 23, 25-26 (2010) (asserting that lawyers “need to wake up to the changes that technology is bringing to law practice”); see also Fredric I. Lederer, *Technology Comes to the Courtroom, and . . .*, 43 EMORY L.J. 1095, 1121 (1994) (claiming that “[i]ncreased use of technology in courtrooms is now inevitable”).

<sup>54</sup> LTE, or Long Term Evolution, is the current standard in high-speed data technology for smartphones. See Dwight Silverman, *Fast and Furious: Life with LTE on an iPhone 5*, CHRON TECH. BLOG (Sept. 28, 2012), <http://blog.chron.com/techblog/2012/09/fast-and-furious-life-with-lte-on-an-iphone-5/>.

<sup>55</sup> See WIS. STATE BAR, *supra* note 34, at 2 (explaining the “exponential” growth of technology and its increased use in the law firm setting).

<sup>56</sup> The ABA has recently amended the Model Rules of Professional Conduct to reflect the need for lawyers to remain current on the technologies pertinent to meeting the needs of their clients. See Sean Doherty, *ABA Adopts Ethics Policy on Lawyers’ Use of Technology*, LAW.COM (Aug. 8, 2012), [http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202566577730&ABA\\_Adopts\\_Ethics\\_Policy\\_on\\_Lawyers\\_Use\\_of\\_Technology&return=20121113082355](http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202566577730&ABA_Adopts_Ethics_Policy_on_Lawyers_Use_of_Technology&return=20121113082355); see also Robert D. Steele & Tony Gjata, *Smartphones for Lawyers*, A.B.A. 1, 1, [http://www.americanbar.org/content/dam/aba/publications/rpte\\_ereport/2011/Dec\\_2011/smartphone.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/rpte_ereport/2011/Dec_2011/smartphone.authcheckdam.pdf) (last visited Dec. 4, 2012) (detailing the aspects of smartphones that are “particularly important in the legal environment”); see also WIS. STATE BAR, *supra* note 34, at 2 (explaining that the pace of technological advances increases the expectation that lawyers advance with the technology); Jeff Richardson, *2012 ABA Tech Survey Reveals Surge in Lawyer iPhone, iPad Use*, IPHONE J.D. (JULY 20, 2012), [http://www.iphonejd.com/iphone\\_jd/2012/07/2012-aba-tech-survey-reveals-surge-in-lawyer-iphone-ipad-use.html](http://www.iphonejd.com/iphone_jd/2012/07/2012-aba-tech-survey-reveals-surge-in-lawyer-iphone-ipad-use.html) (noting the surge in lawyers using iPhones and iPad for work).

<sup>57</sup> See WIS. STATE BAR, *supra* note 34, at 2 (suggesting that lawyers are expected to understand and implement new technologies); Correy Stephenson, *Digital Devices May Impose Ethical Obligations on Attorneys*, NEW ORLEANS CITY BUS. (Nov. 16, 2010 2:00 PM), <http://neworleanscitybusiness.com/blog/2010/11/16/digital-devices-may-impose-ethical-obligations-on-attorneys/>; James Bernard, *E-discovery: Lawyers Have Specific Duties with Regard to E-discovery*, INSIDECOUNSEL (Nov. 13, 2012), <http://www.insidecounsel.com/2012/11/13/e-discovery-lawyers-have-specific-duties-with-rega> (outlining the attorney’s duty “to become computer forensic experts”).

Additionally, it is important that today's lawyer understand that evolving with technology is a means of survival.<sup>58</sup> The ability to use the latest technology will help to forge a connection with the clients of the future, who are increasingly growing up in a world driven by blog posts and tweets.<sup>59</sup> Furthermore, the court is becoming less patient for lawyers who are ignorant to the latest technological advances.<sup>60</sup> For these reasons, evolution to iMindfulness marks an important step for lawyers who desire a mindful practice in the digital age.

#### IV. "To Be" an iMindful Lawyer

"When you drive around the city and come to a red light or a stop sign, you can just sit back and make use of these twenty or thirty seconds to relax — to breathe in, breathe out, and enjoy arriving in the present moment. There are many things like that we can do."<sup>61</sup>

—Thich Nhat Hanh

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<sup>58</sup> By not implementing the latest technologies, lawyers risk losing the advantage of being needed because clients increasingly rely on self-help. See WIS. STATE BAR, *supra* note 34, at 2 (predicting the extinction of lawyers who do not adapt to the current technologies). The non-tech savvy attorney also risks job security because the legal market has already started to become dependent upon the use of technological advances. William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, A.B.A.J. (July 1, 2011, 3:40 AM), [http://www.abajournal.com/magazine/article/paradigm\\_shift/](http://www.abajournal.com/magazine/article/paradigm_shift/) ("As the balance of power shifts from traditional law firms and toward clients and a raft of tech-savvy legal services vendors, the price of continued prosperity for lawyers is going to be innovation and doing more with less."); see also Donald F. Parsons, Jr. & Lisa K.W. Crossland, *Technological Tools for Civil Litigation*, 14 DEL. LAW. 33 (1996) (arguing that "[t]hrough appropriate use of available technology, trial lawyers" have improved their efficiency, quality of work product, and chances of courtroom success).

<sup>59</sup> See Jaclyn Cabral, *Is Generation Y Addicted to Social Media?*, 2 ELON J. UNDERGRADUATE RES. IN COMM. 5, 5 (2011), <http://www.elon.edu/docs/e-web/academics/communications/research/vol2no1/01Cabral.pdf> (describing the internet as an "indescribable power to influence, connect, and mobilize the current population"); see also Debra C. Weiss, *Differing Views of Lawyers on Twitter: Savvy Marketing Tool or 'Nonsense'?*, A.B.A.J. (July 15, 2011, 6:17 AM), [http://www.abajournal.com/news/article/differing\\_views\\_of\\_lawyers\\_on\\_twitter\\_savvy\\_marketing\\_tool\\_or\\_nonsense/](http://www.abajournal.com/news/article/differing_views_of_lawyers_on_twitter_savvy_marketing_tool_or_nonsense/) (noting that some lawyers rely on blogs and twitter as a viable marketing tools); Henderson, *supra* note 58 (attributing many of the structural changes seen in law firms to the "enormous structural change[s]" that "virtually all [other] industries have undergone" in response to "globalization and technology").

<sup>60</sup> See Alan Blakely, *Ethics and Professionalism in E-Discovery*, 247 N.J. LAW. MAG. 17, 18 (2007) (quoting Magistrate Judge David Keesler who said during a continuing education seminar that lawyers cannot get away with claiming ignorance about technological advances for much longer); John Wallbillich, *Ignorance of Tech is No Excuse*, WIRED GC (Aug. 2, 2012), <http://www.wiredgc.com/2012/08/02/ignorance-of-tech-is-no-excuse/>.

<sup>61</sup> Thich Nhat Hanh, *Stress and Work*, BUDDHA'S WORLD, <http://www.katinkahesselink.net/tibet/thich-stress.html> (last visited Dec. 4, 2012)

Practitioners of mindfulness understand that bringing awareness to the moment does not conclusively mean turning off the cell phone.<sup>62</sup> On the contrary, mindfulness encourages being present when the phone rings, paying attention to the thoughts spawned by answering, or not answering the call, and deciding what to do with the urges or thoughts that result.<sup>63</sup> One cannot be present for something that they deliberately avoid. This is because, by removing distractions that are naturally part of our present being, we deny ourselves the ability to manage the thoughts and emotions that spontaneously arise during times when technology becomes a challenge.

Conversely, the decision “to be” with technology does not mandate that a person attend to all technology. The iMindful lawyer does not decide to accept technology “as it is” while assertively incorporating every technological advancement into his or her practice improvidently. To do so would contradict the purpose of practicing mindfulness because the lawyer would have to focus on past intentions for exploiting various technologies while constantly forecasting how to better use them.

The concept of iMindfulness promotes balance. Specifically, iMindfulness aims to reduce the uncertainty about accepting technology so that the individual can be comfortable in the present where technology is a reality.<sup>64</sup> For illustrative purposes, imagine you are in a seating posture prepared to begin a mindful sitting.<sup>65</sup> You center your body in your chair and close or

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<sup>62</sup> See *supra* text accompanying note 45.

<sup>63</sup> See *supra* text accompanying note 26.

<sup>64</sup> If the acceptance of technology is achieved mindfully, then technology has the potential to strengthen the mindfulness experience. See Jerry Duvinsky, *Faces of Control: Technology Addiction*, HOW TO LOSE CONTROL AND GAIN EMOTIONAL FREEDOM BLOG (Dec. 2, 2012), <http://www.mindfulxposurebook.com/techno-addiction/> (explaining that unmindful use of technology spawns the negative consequences attributed to its use).

<sup>65</sup> See generally, Sakyong Mipham Rinpoche, *How to Do Mindfulness Meditation*, SHAMBHALA SUN (Jan. 2000), <http://www.shambhalasun.com/index.php?option=content&task=view&id=2125> (explaining the mindfulness practice of sitting).

lower your eyes. You begin the three minute sitting by bringing attention to your breath as it enters your body. You notice how your back feels against the backrest of the chair, as well as the sensations in your feet as they come into contact with the floor.

As you exhale, the first interrupting thought enters the mind. It reminds you that you have an afternoon appointment with a difficult client. You notice that you begin to feel frustrated and your feet begin to feel heavy against the floor. You gently redirect your attention back to your breathing. As you continue for several minutes, you notice the continuous “tick” of the second hand making its way around the face of the wall clock in your office. Should you mindlessly disturb your sitting to remove the clock from the room? Or should you incorporate the distraction into your mindfulness practice by accepting that the clock “just is” and refocusing your mind, as you have done for the past several minutes, with other non-technical distractions?

Between the two choices, the iMindful lawyer would seek to promote the use of technology to facilitate awareness, presence, and intentional living.<sup>66</sup> To the iMindful lawyer, the wall clock is no less a technological device than a cell phone or an email notification. The practice of iMindfulness prepares the practitioner to make the non-judgmental decision to be distracted by technology, or not, and to do so intentionally and not reactively. Nonetheless, the evolution to iMindfulness is not instantaneous. The process requires three phases, all of which raise the level of intentionality of cultivating a healthy and harmonious coexistence with technology while practicing law and still being mindful.

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<sup>66</sup> See Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, in THE AFFECTIVE ASSISTANCE OF COUNSEL 447, 449 (Marjorie A. Silver ed., 2007) (inserting the notion that mindfulness aims to “deal more effectively with distractions”). The inference, in relation to technology, is that the practice of mindfulness does not advocate segregating oneself from distractions, such as digital devices, but proposes that we learn to recognize and coexist with it. *See id.*

The first phase involves acknowledging technology as a critical component to a successful law practice.<sup>67</sup> Simply put, technology “just is.” The iMindful lawyer must come to terms with this fact and accept it because, while technology undoubtedly may involve challenges and trade-offs,<sup>68</sup> maintaining a beginner’s mind approach to new technology is critical in the ability to functionally operate in the twenty-first century.<sup>69</sup> During this phase, the lawyer simply must keep an open mind to the role that technology plays in the legal profession.

The second phase beckons the iMindful lawyer to enjoy a comfortability with technology such that there may be a sense of coexistence. Awareness of where the world is technologically will help the lawyer see with clarity how to maneuver through the digital age. Deciding whether to upgrade to high-speed internet will be an intentional decision, cognizant of connectivity issues. The iMindful lawyer, who is unable to access e-discovery files because the internet connection is slower than industry-standard, is not crippled by lack of presentism.

Additionally, in this phase the iMindful lawyer is present for the negative urges compelling her to stay connected. She controls the dosage of technological influence from moment to moment because she has learned how to manipulate the technology. She is the master of her technology insofar as she knows how to best use it for her specific needs. Lastly, she does not become flustered by technical glitches because, when she is ill-equipped to resolve her own issues, she knows where to turn.

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<sup>67</sup> See *supra* text accompanying note 53.

<sup>68</sup> See *supra* text accompanying note 42.

<sup>69</sup> See *supra* text accompanying note 58.



The last phase invites the iMindful lawyer to embrace technology such that it becomes a natural part of his mindfulness practice. He triages his emails and social media blogs by scheduling time so that he may deliberately attend to them. He utilizes the “VIP” and “Do Not Disturb” functions on his iPhone<sup>70</sup> to ensure that he is present for his email and phone conversations. He downloads the latest mindfulness apps to help facilitate his periodic meditation sessions.<sup>71</sup>

He relinquishes himself to experience the world of technology because knows that technology “just is” and intentionally “is” with it.<sup>72</sup> In doing so, he avoids taxing his brain such that his attentiveness and focus remain uncompromised but, most importantly, he decides to do so!

## V. Conclusion

As lawyers, it is important to recognize that technology is embedded in all aspects of the legal practice, so inevitably there will always be potential technological distractions. As mindful lawyers, it is critical to realize that we are empowered to deal with any such distractions, non-judgmentally, on purpose, and in the moment. But as iMindful lawyers we rise to a level of

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<sup>70</sup> “VIP” is a feature of Apple’s iOS6 Mail application, which allows the end-user to streamline emails that are considered the most important to a “VIP” inbox. See *iOS6*, APPLE.COM, <http://www.apple.com/ios/whats-new/> (last visited Dec. 4, 2012). The “Do Not Disturb” function “suppresses all incoming calls and notifications” and may be setup to remind end-user return missed calls at a scheduled time. *Id.*

<sup>71</sup> See Kate Crisp, *Review of Best Mindfulness Apps*, PRISON DHARMA NETWORK (Apr. 13, 2012, 8:00 PM), <http://www.prisondharma.com/profiles/blogs/review-of-best-mindfulness-apps> (listing over a dozen mindfulness apps available on Apple’s App Store); see also Leanne Italie, *Americans Turn To Technology For Mindfulness, Impulse Control*, HUFFINGTON POST (Dec. 29, 2010, 5:09 PM), [http://www.huffingtonpost.com/2010/12/29/americans-turn-to-technol\\_n\\_802422.html](http://www.huffingtonpost.com/2010/12/29/americans-turn-to-technol_n_802422.html) (exhibiting various technological tools used to cope with distractions).

<sup>72</sup> Relinquishment is the “ultimate objective of the practice [of mindfulness and] . . . leads to awakening and liberation. Steven Goodheart, *Mindfulness of Breathing*, METTA REFUGE (Feb. 8, 2010), <http://mettarefuge.wordpress.com/2010/02/08/mindfulness-of-breathing-a-short-teaching-by-thich-nhat-hanh/> (detailing the Buddha’s outline of “the comprehensive path of anapanasati[,]” the Pali word for “full awareness . . . on the in- and out- breath”).

coexistence with technology in such a way as to master it, and through that process strengthen our mindfulness practice.