

Mindfulness and Its Misuse in the Legal Arena

In the legal arena, issues with the use of mindfulness may extend from the individual to the programmatic.

By **Peter Lobl** | June 01, 2020 at 02:05 PM



“I’ve found mindfulness to be helpful” Helen said. Helen, a junior partner at a large law firm, was telling me about Mark, a senior associate. She told me how she made use of mindfulness to cope with what she saw Mark say and do. Mark, she said, is highly regarded at the firm, is up for partnership soon, and has been under a lot of pressure in the past couple of years. Helen had

occasionally worked with Mark, as they are in the same department, and she found him to be intense, dedicated, tireless and a superb attorney. She felt they got along great, knew she could rely on him to get the work done right, and wanted to make sure they maintained their working relationship. “He can ride people pretty hard sometimes,” Helen admitted.

Walking past the closed door to Mark’s office, a couple of doors down from her own, Helen would sometimes hear Mark shouting. A number of times, she had seen staff or junior associates, looking shaken, come out of his office, their heads down, with Mark’s angry and loud reprimands still emanating from within. “When that happens,” Helen said “I find it helpful to be aware of what I’m feeling” Helen then described how she would notice anger towards Mark and sadness for the staff and junior associates. “Using mindfulness helps me accept my emotions as passing experiences,” and Helen described how she would use mindfulness in these instances to get a hold of her attention and direct it back to her work.

To bolster wellness, many law firms have directed resources to training initiatives to help their attorneys manage the stresses of law firm practice more effectively. Practicing mindfulness is an important component of many such initiatives, but mindfulness can also be inadvertently misused. In the situation described above, Mark would himself likely benefit from practicing mindfulness as an initial step towards better managing his stress and anger. But Helen, in the above case, is using mindfulness as an avoidance mechanism. She is treating her feelings about Mark’s behavior as a nuisance or distraction, and she is misusing mindfulness to avoid the discomfort of asserting herself and to reinforce an ineffective form of conflict avoidance.

Stripped to its essence, mindfulness is about attention control. Mindfulness is an integral component of several treatment modalities, such as Acceptance

and Commitment Therapy (ACT) and Dialectical Behavior Therapy (DBT), and the frame of these modalities maximizes the effective use of mindfulness in the service of these evidence-based treatments.

Practicing mindfulness can be helpful for people who tend to worry or ruminate. In such cases, mindfulness can help people gain an awareness of themselves as distinct from their worry thoughts: that they are *having* thoughts and worries, but that their self—their conscious awareness—is distinct from these thoughts and worries. With practice, mindfulness can help people redirect their attention away from worries and ruminations and back towards more productive mental tasks.

Mindfulness can also be helpful to people who are reactive and act impulsively. For them, emotional experiences may feel like a swirl where thoughts, feelings, urges, and actions blend together into an indistinguishable moment. In such moments, people may say things or do things that they later regret but that they felt compelled to say or do in the moment. Practicing mindfulness can help people anticipate such moments, and it can help them plan for alternative behaviors. As mentioned above however, mindfulness can also be misused as a way to avoid persistent problems.

In Helen's case, she is noticing behavior by her colleague Mark that engenders anger towards him and sadness towards staff and other associates. Were this a one-time occurrence, Helen might have used mindfulness to notice her feelings, and she might have then deliberately decided that speaking to Mark wasn't worth it—anyone can have a bad day. But when Helen witnesses the same behavior happening repeatedly and she uses mindfulness over and over to get past her feelings about that behavior, she is using mindfulness to avoid the responsibility she may have in addressing a damaging workplace dynamic. She is putting mindfulness to use

in the service of a pattern of avoidance that is interpersonally ineffective. In so doing, Helen is also disregarding information contained within her anger.

Our perceptions and emotions have evolved over eons to work in tandem and to deliver us accurate information about our surrounding world. Most emotions also contain some call to action: an action urge. The emotion of anger signals the need to prepare for some protective action on behalf of ourselves or someone else. In Helen's case, she is accurately perceiving that Mark is treating colleagues unprofessionally, and her anger is underscoring that perception with an urge to act. As she experiences Mark's behavior the same way each time, the accuracy of her perception and the validity of her anger are thereby repeatedly confirmed. Instead then of using mindfulness each time to redirect her attention back to work, Helen should instead be keeping her attention on her anger and using mindfulness to consider what her anger is trying to tell her.

In the legal arena, issues with the use of mindfulness may extend from the individual to the programmatic. Some law firm wellness initiatives rely heavily, if not primarily, on mindfulness training and other self-care programs to address the stresses of law firm settings. Some of the factors that contribute to issues of lawyer wellbeing can however be related to law firm norms and structures. These factors might relate to the unpredictability of work hours or the lack of a say over assigned projects, to name a couple.

When distress arises relating to such factors, asking lawyers to cope with such distress by practicing better self-care and mindfulness means in effect telling lawyers that the solution to their environmental stressors is for them to do more work—in this case, more work on themselves. It may indeed be helpful for lawyers at law firms to develop better coping skills to deal with

workplace distress, but part of the solution, in fairness, should also include trying to problem-solve the related workplace stressors.

Like regular exercise, a balanced diet, and good sleep hygiene, practicing mindfulness can help promote health. But mindfulness can also be misused when its practitioner uses it to disengage from and then disregard the information contained in emotions as merely transient and distracting inconveniences. This misuse of mindfulness can then perpetuate ineffective patterns of conflict avoidance and deter lawyers from practicing effective communication skills with their colleagues.

Coming back to Helen, she was able to see after some reflection in session how she was misusing mindfulness as a way to avoid what her emotions were telling her, and she gained some insight into her reluctance to assert herself. She and I discussed if it was her place to say anything to Mark and, even if it was, whether she would want to do so. She eventually decided that the answer to both questions was yes. We then talked about what she might say. Helen thought through with care how and when she would bring things up with Mark, and she integrated DBT Interpersonal Skills and principles of humanistic psychology into her preparations. In the end, Helen's careful preparation paid off. Her conversation with Mark helped him become more aware of his effect on others, and it set a course for greater trust and openness between the two of them.

The names and identifying characteristics of the attorneys referenced in this article were changed in order to safeguard their privacy and confidentiality.

Peter Lobl is a clinical psychologist in private practice in Midtown Manhattan. He formerly worked for several years as an associate in big law firms. For

questions or comments about this and other articles, he can be contacted at <http://peterwloblphd.com/>.