

MINDFULNESS-A CHALLENGE FOR OUR TIMES

By Judge Alan S. Gold

A famous Teacher has put it this way, when asked what surprises him most about humanity, “Man, because he sacrifices his health in order to make money. Then he sacrifices money to recuperate his health. And then he is so anxious about the future that he does not enjoy the present; the result being that he does not live in the present or the future; he lives as if he is never going to die, and then dies having never really lived.”

My topic is not as broad as that of the famous Teacher, but it does involve one aspect, and that is the relationship between our health and mindfulness: the ability to live in and enjoy the present moment. Why should this concern lawyers and judges? We constantly hear, both as lawyers and judges, about the lack of “civility” in the practice of law. We, as judges, have raised the price of “incivility” by imposing sanctions, although many lawyers complain we have not used sanctions enough. As a profession, we have become so concerned about “incivility” that The Florida Bar has amended the Oath of Admission by “... pledging fairness, integrity, and *civility*, not only in court, but also in all written and oral communications.” But, do sanctions and oaths really address the root cause of the problem of incivility? I think not.

For what it is worth, it is my belief and observation that the root cause of the incivility and poor professional behavior arises, in large part, because of the extreme and cumulative stresses that we, as lawyers and judges, find ourselves coping with on a daily basis. This is especially true given these difficult and challenging economic times, and, at the same time, having to confront the increased alienation we experience from each other because of our technology. My premise is that the degree of civility practiced by all of us is directly related to how we cope with, and handle, extreme stresses. If this premise is true, what can we do about it? How do we begin to control our reactive and counterproductive behavior when we feel “out-of-control” and feel helpless to do anything about it?

Let me be clear. In offering my comments, I am not asking you, as lawyers or as judges, to do anything to diminish your effectiveness or to give up your “edge.” To the contrary, in addition to managing stress, improving health and increasing civility, my recommendations are directed to enhancing your skills and effectiveness. Your first reaction may be that this sounds to “New Age” and implausible, but I ask you to be “mindful” and bear with me. In effect, what I am suggesting to you is no more than how some martial art’s masters deal with moments of intense combat; that is, from the center, flowing with the breath. We can apply these “martial arts” skills to the practice of law and achieve an energized calm, and with it a proactive and focused choice which adds to our power to thread through the turbulent storm.

The Medical Side of Excess Stress

Let us acknowledge that we, as lawyers and judges, are “adrenaline junkies.” We are drawn to a profession that, at times, gives us a “rush” by challenging us often in dramatic ways. So, some degree of stress is inherent in what we do, and many of us can cope pretty well. But, what are the medical effects, and obvious results, of extreme stresses that we experience over a long period of time? We all have seen or experienced them: inappropriate anger, impatience, overreaction to minor problems, anxiety, fear, irritability or resentment. People under extreme stresses are just overloaded with more than they can cope with. They may be unable to concentrate or to think clearly. They may be constantly active but accomplish little. As judges, this condition can manifest as an inability to make decisions in a timely manner. Yes, we, as judges, can experience extreme stresses. As noted by author Isaiah M. Zimmerman, “judges work at the convergence of powerful demands: ... heavy dockets; restrictions on speech and behavior; intense media exposure; public ignorance of the role of the courts; and the relative isolation of the judicial position....” Such challenges create unique stresses, personally and professionally.

Here is what the medical literature says about the effect of excess stress. There has been a revolution in medicine concerning how we think about diseases of the body and of the mind. It begins with the recognition of the interaction between the body and mind, the ways in which emotions and personality can have a tremendous impact on the functioning and health of virtually every cell in the body. It is about the role of excess stress in making us more vulnerable to disease, including psychological impairments, or making diseases that we are coping with that much worse. We have come to recognize the vastly complex intertwining of our biology and our emotions, the endless ways in which our personalities, feelings, and thoughts both reflect and influence the events in our bodies. We need to understand that prolonged and excess emotional disturbances can adversely affect us. Put simply, excess stress can make us sick or sicker. Perhaps it is more correct to say that excess stress increases our risk of getting diseases that make us sick, or if we have such a disease, excess stress can increase the risk of our defenses being overwhelmed by the disease. Particularly when we become exhausted, the visible effects are evidenced by bad behavior which we label as “incivility.” As it turns out, research is pointing to the role that mindfulness can play in changing the ways that we relate to stressful situations. The stressful situations are ongoing, but how we respond is forever open to “reconsideration.”

A large body of evidence suggests that stress-related disease, both physical and emotional, emerges, predominantly, out of the fact that we so often activate a physiological system that has evolved for responding to acute physical emergencies, but we turn it on for months on end, worrying about clients, our cases, our economics, our careers, and our families. We worry about how to be the “best” at all of our endeavors, and how to balance them. What makes things worse is that the stress-response may be mobilized not only in response to physical or psychological pressures or insults, but by the *expectation* of them. If we repeatedly turn on the

stress-response, or if we cannot turn off the stress-response at the end of a stressful event, our stress-related problems simply compound and grow worse. Another feature of the stress-response is that, with sustained stress, our perception of pain becomes blunted. We numb ourselves and are not even aware of what we are doing, how we are doing it, or why we are doing it. It becomes habitual and addictive. In fact, a well-known Johns Hopkins study has found that lawyers are more prone to depression than members of any other profession. Given all of the scientific explanation, is there any wonder that lawyers often can be “uncivil” to each other and exhibit behaviors in court and in life which are unacceptable and unproductive?

The Freedom to Choose

You may say, “I cannot change my reality”-whatever it is. “ Don’t you understand,” you may say, “that I have to earn a living?” “I cannot be perceived as *weak* by my partners, clients, or the court.” “I have to be the toughest lawyer on the block or the clients will go to someone else-go to someone known to be meaner and louder.” “This is,” you may say, “the *real* reality of the practice of law.”

But, what you may not know is that growing numbers of attorneys are embracing some form of practice to achieve mindfulness. Their reasons for doing so are varied, but chief among them is stress management and improved mental and physical health.

Here is what I am suggesting. I am not asking you to change your reality or to diminish your earning capacity. I am suggesting that you have the *freedom to choose* how you *deal* with your reality, and, in turn, actually increase your effectiveness and earning capacity. First, you have to awaken to what your reality really is. This alone is no easy feat. It is like taking a step backward and honestly observing, with some detachment, what you are doing and how you are doing it.

Second, you have to awaken to the fact that you, whoever you are, have the *power to choose*. This is an extraordinary gift. This is nothing short of “self-transformation.” We have some measure of freedom to choose how we respond to our reality. This is not a novel concept. We always are choosing anyway. Every time you act or react some choice is made. Sometimes these choices are conscious and sometimes they are not. I am talking about “choosing” to increase the awareness that it no longer serves us to live completely stressed out. I am suggesting that we have the power to choose another way to deal with our stresses. The key to transformation is that you create the change you want to see in yourself (which echoes Gandhi’s advice that you must become the change you want to see in the world).

Yes, admittedly, we carry within ourselves many factors that we believe limit our freedom to choose and to obscure our awareness. There are layers and layers of emotions and physiological tendencies that we have formed over a life time in response to our particular life situations. And yet, through a mindful practice, it is possible to take responsibility for all of these dimensions of whom we are, through the transformative recognition that we are always the one doing the choosing-and that our choice can be to

change into a greater self— and to do this right here and right now. But, there is a caveat. It will take a tremendous effort to break old habits. It will require a focused intention, a strong power of will and a conscious volition. Notwithstanding, even if we do choose to change, we ultimately will slip back into our old ways. No problem. We simply refocus our intention and plow ahead. It really is a “moment-to-moment” effort.

What is our goal? It is to center us at will; it is to silence the inner judgmental voice that says we are unworthy; it is to reconcile our own inner conflicts; it is to rise above the immediate disturbances and to be unaffected by them, and to see ourselves and those around us from an expanded perspective. Sounds to Zen? So, exactly what is wrong with that?

It Is As Simple As Breathing

There are many techniques to help us change. Yet, at the heart of many of these techniques, there is one constant, and that is the awareness of the breath. We are breathing continuously from the moment of birth to the moment of death. While everything changes around us, breathing is constant. Breath and life are synonymous. It is the bridge between your mind and your body. But, breathing is not continuous as such. There are gaps. The breath goes out, then for a single moment, or part of a moment, breathing stops. Then breath comes in. In that gap between breaths, anything is possible. Sincere observation and attention will help you feel the gap. If you feel the gap, you can choose to use that moment to calm the mind and your turbulent emotions and interrupt your “mind streaming”—that constant source of mental junk mail. How do you do this? Simply focus on, and watch, the breath-its very passage. Here, breath and consciousness become one. It is like Arthur Rubenstein’s answer to the question, “Maestro, how do you handle the notes as well as you do?” His response was, “I handle the notes no better than others, but the pauses-that is where the art resides.”

Try it for yourself. If you get angry, your breathing will suddenly change; it may become irritated or chaotic. Your blood will take a different rhythm. Different chemicals will be released in the body; the whole glandular system will change. You become different. But, even then, especially at that point, you can pause and focus on your breath. Observing it becomes a tool to reclaim your balance and center. When you are at your center, you are total and at your most effective best. In contrast, when you are fragmentary, when you are off-center, your actions are out-of-control. As you pay attention to your breathing, you may notice that it changes. Shallow breathing may shift to deeper, slow breaths. Or, if you notice shallow breathing, you may choose to slow down your breathing. The moment you can feel the center from where breath goes out or comes in, the very point where the breath fuses-that center-is where you will find your calm, control and effectiveness. This is an ancient technique. I did not invent it. And medical science confirms its effectiveness.

The Need for Allies

We cannot easily make changes alone. It takes real courage. Our profession

inherently discourages changes which may help us individually, but which are perceived by law firms, or individual partners, as “weaknesses” that could threaten the bottom line. But, like it or not, our profession already is changing in significant ways—changes that have or will affect the bottom line. Clients are unhappy with paying legal fees by billable hours; associates are unhappy with unreasonable professional demands; partners are unhappy with their firms and move their “book of business” across the street. Everyone complains about the lack of a balanced life, and the effect of practice on health and relationships. The level of anger and frustration is evidenced everywhere. Just drive on I-95 or spend a day in the courts.

So, it is time to talk Truth about such things. Yes, there are some among us who already have chosen to change their manner of practice. Even United States Supreme Court Justice Breyer has discussed how he meditates each day because it was good for his health. (“I don’t know that what I do is mediation, or even whether it has a name. For 10 or 15 minutes twice a day I sit peacefully. I relax and think about nothing or as little as possible. And that is what I’ve done for a couple of years.”)

But, what has been missing is an organized means to join with others who are interested in the subject. In response, the Dade County Bar Association, in conjunction with our local Federal Bar Association, has created a Task Force on the Mindful Practice of Law. There will be at least three components. First, an informational component which will offer, through a website and newsletters, an identification of Mindfulness Resources. Second, planning already is underway for Bench/Bar conferences and workshops on health and the mindful practice of law. Third, a variety of groups will be formed, for those interested, to offer opportunities for group meditation and to talk about how to live and practice mindfully. One area for discussion is how we acknowledge and integrate that, like it or not, all of us are in this mess together, and that we need to “cut each other a break”—both in court and in life. We need to need to be kind to each other because anyone you meet is also fighting a great battle too.

Where will all of this lead? Maybe to something important—or not. Perhaps there will come a day when law firms recognize that the true bottom line is not diminished, but enhanced, by incorporating mindfulness into the everyday practice of law. Meanwhile, it comes back to you. Do you choose to change to a healthier life? Do you acknowledge your power and freedom to do so? It is like the famous saying from India, “wisdom is not something you learn, it is something you become.” Come along for the ride. Let’s see where we go.