

Mindfulness, Meditation and Clinical Law Teaching©
Prof. Tamara Kuennen, University of Denver Sturm College of Law
tkuennen@law.du.edu

Clinical law professors teach students how to practice law by directly supervising them as they handle live-client cases. During individualized supervision sessions, the heart of clinical law teaching, the professor guides student decision-making with regard to every aspect of the representation of the client. The professor strives to strike a delicate balance between supporting student autonomy and directing student actions. To effectively do so, the professor is tasked with building a trusting relationship with students, so that they feel safe to speak openly and candidly about their clients and cases.

This professor-student relationship parallels, in many respects, the relationships that attorneys must build with their clients. Both relationships must be open, trusting, and candid. Interestingly, teaching students to build such relationships with clients is a topic that has been identified by clinical law professors as one of the most challenging aspects of clinical teaching. I explore how meditation, and other contemplative practices (discussed below) can be used by both professor and student to foster these parallel relationships.

Many scholarly articles focus on the challenging nature of teaching students to approach clients with an open mind. In a seminal article, *The 5 Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001), Sue Bryant and Jean Koh-Peters explained a methodology for fostering effective cross-cultural relations between student and client. The ultimate goal is for students to master the concept of “isomorphic attribution”: the capability to attribute the same meaning to behavior and words that the person who is communicating intended to convey, rather than to interpret a given behavior or words through the listener’s own cultural lens. Bryant and Koh-Peters developed five habits of mind that professors may teach students to use in this endeavor. These include analyzing how similarities and differences between student and client influence the student-client interaction; envisioning the client, the student, and the legal decision-maker as three rings in a Venn diagram, for the purpose of analyzing where these three actors’ thinking overlaps and where it diverges; engaging in “parallel universe” thinking, in which the student actively looks for multiple interpretations of a client’s decision or behavior; identifying (in advance) pitfalls and red flags for misinterpretation; and recognizing one’s own biases and stereotypes in a self-analytical, rather than self-judgmental, manner, for the purpose of improving interactions in the future.

Cross-Cultural Lawyering is now a classic of clinical law scholarship. Ten years later, its core principles continue to be widely discussed. Recently, during a plenary presentation at the 2010 AALS Conference on Clinical Legal Education, a panel of clinical law professors discussed a series of competencies, derived from the work of Bryant and Koh-Peters and from critical legal theory, that professors ought to be teaching students. The competencies include: suspension of judgment; resistance to labeling; relaxed interpretive stance; interpretation of events with caution; humility; and rejection of “lawyer pre-understanding.”

Meditation and other contemplative practices promote cross-cultural lawyering and the “critical theory competencies” discussed above. Existing literature illustrates how contemplative

practices significantly impact a lawyer's ability to more openly and expansively approach and communicate with clients. *See, e.g.,* Marjorie Silver, *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION*; F. Gregory Coffey & Maureen Kessler, *THE REFLECTIVE COUNSELOR*; David Hall, *THE SPIRITUAL REVITALIZATION OF THE LEGAL PROFESSION: A SEARCH FOR SACRED RIVERS*.

Given that the relationship between clinical law professor and student parallels that between student and client, and given that teaching students to build trusting relationships with clients has proven to be challenging, I focus on how a clinical law professor can use contemplative practices as a foundation from which to approach students. While there is now a significant body of literature, both scholarly and otherwise, that demonstrates the impact that contemplative practices have on attorney-client relations, there is no literature exploring the impact that these practices may have on professor-student relations. I propose that, to the extent that clinicians value teaching students to engage in Bryant and Koh's "parallel universe thinking," to suspend judgment of their clients, and to reject "lawyer pre-understanding," we must develop in ourselves these habits of mind, both as a general matter and specifically with regard to our approach to our students.

Contemplative practices cultivate these habits of mind; they teach the professor to approach her student from a calm, compassionate, open-minded and empathetic perspective. By employing the habits, the professor at once role models precisely what she hopes to instill in her students for use with their clients, and develops a deeper, more trusting relationship with the student.

All of the habits of mind discussed above are encompassed within the "meditative perspective." The meditative perspective, a term used by the Center for Contemplative Mind in Society, is defined as an outlook that gradually develops through meditation or other contemplative practices. A contemplative practice, in turn, is any activity that quiets the mind in order to cultivate the capacity for insight. Mindfulness meditation is one of the most prominent of these practices. Its "essence is simply being fully present with what happens in each moment of the day. It is a method to remain grounded and centered amidst the often contentious and stressful nature of the legal profession. With practice over time, mindfulness meditation fosters a more profound relationship with our thoughts, emotions, and ultimately, ourselves. Meditation practitioners gain more choice and flexibility in our thinking and feeling as well as an increased capacity to embrace paradox and opposing viewpoints without losing balance or focus." *The Meditative Perspective, Working Draft*, Center for Contemplative Mind in Society, April 2007.

I have begun to gather and develop a set – a toolbox - of contemplative practices that a law professor may use to enhance the professor-student relationship. As one example, a professor during supervision might act as an observer of his own thoughts. His awareness of his thoughts might lead him to explicitly question how he can best support his student's autonomy in that moment; whether he is prioritizing the student's learning via the explicit direction he is giving the student; whether he is actually engaged in listening to the student; and whether he is truly hearing what the student is trying to tell him, from the student's (not his) perspective. As another example, a professor during supervision might recognize within herself a feeling of frustration toward the student. Rather than react to the feeling, she might instead view it as an indicator that she needs to pause, perhaps to gather more information from the student, or to

review the thought processes that caused the frustration to determine their accuracy and trustworthiness, or to evaluate whether she has collapsed her listening versus evaluating roles during a given supervisory session.

The contemplative practices that may be used by a clinical law professor to effectively teach students are countless. I will identify a few that I, and others, explicitly use.