



AMERICAN
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2020 Alexander L. Paskay Memorial Bankruptcy Seminar

Mental Health and Mindfulness in Restructuring Matters

Paul S. Singerman
Berger Singerman LLP; Miami

2020



**AMERICAN BANKRUPTCY INSTITUTE
2020 ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR**

JANUARY 15-17, 2020

MENTAL HEALTH AND MINDFULNESS IN RESTRUCTURING MATTERS

**MY INVITATION TO YOU TO PROMOTE THE DISCUSSION OF SELF-
CARE FOR OUR CLIENT REPRESENTATIVES AND OUR COLLEAGUES
IN THE RESTRUCTURING COMMUNITY**

WRITTEN BY:

PAUL STEVEN SINGERMAN



**My Invitation To You To Promote The Discussion Of Self-Care For Our
Client Representatives and Our Colleagues In The Restructuring
Community¹**

Me

I am 64 years old. I have been practicing law for over 36 years. In the course of my legal career, I have been directly and personally involved in cases in which the principals of 7 businesses have committed suicide. In December of 2019, a client of our firm committed suicide in the midst of an acrimonious divorce. And, in the past 5 years, several of my colleagues in the restructuring community have taken their lives and others have had their careers and family relationships devastated by mental health challenges and drug and alcohol abuse. What we do and what our clients experience in restructuring matters is stressful to be sure.

My Practice

My practice is generally a middle market practice, and our business reorganization team at Berger Singerman often represents financially distressed companies. We also represent fiduciaries, including trustees and committees, as well as creditors.

Closely Held Businesses As “Children”

I have observed that owners of middle market companies are very frequently closely ego connected to their businesses. If their businesses are doing well, they reflect a strong and positive self-image. I have also observed that owners and managers of closely held businesses view their businesses as their children. Their connection to their businesses is more familial in nature than commercial. When their businesses are financially distressed, they present as if they have an ill child. And G-d forbid, when their businesses fail, they feel as if they have lost a child. In addition, these businesses are often the source of financial support for their owners and their immediate families and very often extended family members too. During good times, these owners and managers are proud that their children/businesses are able to support generous and sometimes extravagant lifestyles for their spouses and partners and children and others.

¹ A prior version of this article was published with the materials for the National Conference of Bankruptcy Judges annual meeting in 2016. This article is reprinted with the permission of the National Conference of Bankruptcy Judges.

In my experience, all too often when closely held businesses fail, the owners and managers experience thoughts and feelings of failure too. These owners and managers are not used to failing. And very often, they are not accustomed to openly sharing their fears and anxiety about the prospect of their businesses failing and how they feel in the face of business failure. And very often, they are not accustomed to asking for help in their personal lives, and overwhelmingly they wait way too long to ask for or accept help with their financially distressed businesses.

My Study and Practice Of Mindfulness; Enhanced Performance and Observation Skills

Several years ago, I was fortunate enough to be introduced to the study and practice of mindfulness by District Court Judge Alan Gold in the Southern District of Florida. I am blessed that Judge Gold has become a friend. My exploration of the study and practice of mindfulness has been enriched by my friends Chade-Meng Tan, Professor Scott L. Rogers, the founder of the Mindfulness and Law program at the University of Miami School of Law, and Professor Amishi Jha, Associate Professor of Psychology and Director of the Contemplative Neuroscience, Mindfulness Research & Practice Initiative at the University of Miami.

My study and practice of mindfulness has enriched my professional and personal life immeasurably. And my study and practice of mindfulness has materially enhanced my professional performance and my personal relationships as well. My study and practice of mindfulness has enhanced my observation skills: I am a better listener and observer of myself, my counter-parties (including clients) and the environment around me. I think too that my study and practice of mindfulness has inspired me to embark upon a new approach to dealing with the owners and managers of our firm's financially distressed business clients.

I find in matters in which my colleagues and I are involved in "beauty pageants" or extensive interviews by clients in advance of being retained, what our clients are looking for is a lead lawyer or team of lawyers with relevant substantive knowledge, expertise, experience and lawyers operating at peak performance.

My Study and Practice of Mindfulness Helps Enhances My Performance and Maximizes the Prospects of Peak Performance; Using The Client's Legitimate Interest In The Peak Performance Of Its Advisors As A Platform For A Direct Discussion Of Client Representative Self-Care

That search for peak performance, which is perfectly fair from the client's perspective, has opened the door for me to engage in direct discussions with our client representatives.

Starting about 6 years ago, I began the practice of engaging our client representatives in a discussion about stress and self-care and getting help early on in our involvement in the matter—and often at the first meeting.

After gathering intake information and inquiring, as I usually do, about what would be the optimal outcome for the client—without regard to any “lawyer crap” — I tell the client that work-outs are hard work (and that's one reason they do not call them “play-outs”) and that just as the client is appropriately concerned about the peak performance of her or his advisory team, so too is it fair for the advisors to point out that optimal outcomes for the engagement turn in large part upon the performance and ability of owners and management of the client to stay focused and be “all in,” i.e., to be at *their* peak performance.

That allows me to raise the issue of self-care for the client representatives. I ask about how the client representatives are coping with the stress, and how they are taking care of themselves. I ask—very directly—about whether the client representatives are getting exercise, whether they are sleeping, about whether they are getting help or have anyone to speak to about the stress and anxiety, whether it be clergy, friends, spouse or partner or a professional. And I ask too about drug and alcohol use. I purposely push the envelope in order to make unmistakably clear that these are all issues that I have seen—regularly—in in my career, and to offer to be a sounding board and to let client representatives know that they are not unique in experiencing the stress from the restructuring process. And mostly, I want our client representatives to feel comfortable getting help without shame. I do this by going to where they are and catering to their strong will to succeed and by connecting self-care to their peak performance as a key member of the team.

Feedback From My Colleagues

I have shared my practice with colleagues within our firm and friends at other firms. I confess that many are uncomfortable with it. I offer that by way of disclosure. And to be sure, I am not sure whether their discomfort is more a function of their own anxiety with the subject matter or is in fact reflective of their view that my approach is professionally or ethically or in some other way inappropriate.

Client Feedback

I can faithfully and truthfully report that I have never once had an adverse reaction from a client representative to my expressions of concern. My expressions of concern have nearly always been greeted by a sense of relief by our client representatives, and on a couple of occasions, with hugs and tears (from male and female client representatives; and more frequently the tears are from males).

And my expressions of concerns have not ended with the intake meeting. By raising these concerns early in the restructuring process, I have found it easier to loop back to these concerns throughout the process, and to sometimes invoke humor about the stress and remind our client representatives of our very first conversation about the topic.

If just one of these conversations makes it more comfortable for a client representative to share openly about the stress of the process or to get help, it may save a life and without doubt it can and will reduce stress.

Will You Join Me In Discussing Self-Care With Client Representatives and Colleagues?

I urge each of you in the restructuring community to add self-care and an explicit discussion about the stress of dealing with a financially distressed business to your client management toolbox.

It is important and it is time to legitimize the discussion of self-care for our clients in what we do.

And shame on me: what we do is stressful for the professionals—lawyers and financial advisors and investment bankers and judges in the restructuring community as well. It is time to legitimize and speak more openly about our self-care too.

Included in the materials is an article I wrote for a special issue of *The Florida Bar Journal* on Mindfulness, as well as Mindfulness Tips from the same edition of *The Florida Bar Journal* and an interview Professor Scott Rogers conducted of me on Mindful Listening published in the June/July 2019 edition of *GP/Solo* published by the American Bar Association . I would welcome the opportunity to visit with you about this subject. Please call or write if you wish to do so. My contact information is below.

Paul Steven Singerman
Berger Singerman, LLP
1450 Brickell Avenue
Suite 1900
Miami, FL 33131
305 714 4343
singerman@bergersingerman.com

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Me

I am 60 years old. I have been practicing law for over 32 years. In the course of my legal career, I have been directly and personally involved in cases in which the principals of 6 businesses have committed suicide. I write this article in June of 2016; the last was just 3 weeks ago.

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Paul Steven Singerman
Berger Singerman, LLP
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Suite 1900
Miami, FL 33131
305 714 4343
singerman@bergersingerman.com

Mindfulness: Attorney Perspectives

The Return on Investment from My Study and Practice of Mindfulness

by Paul Steven Singerman, Berger Singerman LLP

I was on a gurney in the hospital having been prepared for a major surgery. The surgeon, whom I had met only briefly before the procedure, greeted me and told me that I should feel completely comfortable because she was 53 percent present and feeling ready to perform my surgery.

On another day, after nearly a year of pretrial motion practice and discovery in a “bet-the-company” case, my trial judge took the bench and announced that he was prepared to proceed with opening statements and the trial, and that he wished both sides to know that he had read 53 percent of our respective submissions and was prepared to proceed.

Thankfully, neither of the incidents described above occurred. But they could have. An often-cited Harvard University study from 2010 confirms that most of us are “off task,” i.e., not focused on what we are doing or supposed to be doing in the present moment about 46.7 percent of the time. This data is very impactful to me.

Perhaps one of the most valuable benefits from the study and practice of mindfulness that I have enjoyed is developing a greater awareness of when I am off task. I have found it immensely useful — and sometimes absolutely frightening — to be aware of when I am regretting the past or worrying about the future. Only with the enhanced awareness of when I am not in the present can I make an effort to return to the present — the only place I can make a difference and the place that contains all the data — free for the observation of it — that allows me to be more knowledgeable and powerful in advancing my mission. To be sure, while the mission may be my professional life and client service, it is equally as effective in my personal life and in my personal relationships. How many of our friends, family members, spouses, and partners wouldn’t appreciate our being more present and observant in our interactions and conversations with them.

For the “tough guy” and “tough gal” lawyers reading this who may reject the notion of studying and practicing mindfulness for fear that it is inconsistent with the “tough” image, try this: Many people, myself included, believe that knowledge is power. Knowledge is derived from data. I know that I am better at observing and collecting data when I am focused on the present. I believe that we lawyers can perform better in all of our endeavors — both personal and professional — if we collect and process data

with a greater sense of awareness, and I believe that the study and practice of mindfulness allows me to do that. I would want my surgeon or the judge presiding over my client’s bet-the-company case to be completely present and focused on my cause, getting 100 percent of the available data — not 53 percent.

For those who remain skeptical about the performance-enhancing benefits of the study and practice of mindfulness, take just a few minutes to investigate the number of Fortune 100 companies in multiple sectors, including Aetna and Nike, which offer mindfulness training. Various branches of the U.S. military offer mindfulness training as well. So, too, does the Seattle Seahawks; NFL players are rarely accused of being “soft.” These companies and organizations are not offering mindfulness training to be nice; they are doing it to enhance the performance of their employees, soldiers, and players. They are doing it to enhance the return they are making on their investment of financial or human resources in their respective organizations.

In my few years of studying and practicing mindfulness, I have averted innumerable problems in my personal and professional life by increasing my awareness of data in the form of my own personal thoughts and feelings in the moment, data regarding my counter-party(ies) in an interaction, and data regarding the environment in which I find myself.

The study and practice of mindfulness has changed my life profoundly and for the better. I am grateful to my friends, former federal district court Judge Alan Gold and Professor Scott Rogers, for introducing me to the study and practice of mindfulness and to other thinkers and writers on mindfulness.

If I have succeeded in piquing your interest — even a little — then please invest the time to read this extraordinary edition of *The Florida Bar Journal*. I promise the return on that investment will be high. Then keep reading and start your own mindfulness practice. It will take work, and it truly will enhance your personal and professional performance.

To be sure, I have a very long way to go. The study and practice of mindfulness has made it easier for me to be aware of that, too!

Courtesy of the Florida Bar Journal

I find that mindfulness helps keep in check what James McElhaney memorably calls our “inner Mongo,” responding quickly and emotionally to a stressful situation. Mindfulness helps us to feel the emotion, but take a moment longer before reacting. One instance I recall is reviewing a project from an associate that fell short of what I expected and thought him capable of producing. Rather than immediately engage in a critical analysis of exactly what was wrong with the work — which would have been “correct” but probably unhelpful to his confidence and ability to truly hear what I was saying — I brought awareness to the breath. Doing so, I became more aware of my emotions (*fear*...of not being in control, of losing the motion), evaluated the reality of the situation, and had a more productive conversation where I did more listening and less talking. This is one example; there are plenty where I did it the other way (unfortunately), but I find practicing mindfulness helps bring about the more constructive and helpful response.

—Harley Tropin, *Kozyak Tropin Throckmorton LLP*

I teach from a mindful perspective and draw upon my own life experiences to enliven a theme around which a classroom discussion will revolve. One morning, as I was pondering the idea of awareness, and how to depict it in a lecture, I had the following experience: A spider had spun a single thread across my doorway at the height of my forehead. I became entangled and broke the thread. The next day, I used the same door, at the same time, and encountered another single thread at the same height. I broke the thread. This went on for four days! On the fifth day, I opened the door at the usual time, and I looked up at the single thread of a spider web about an inch above my head. Now I had something to talk about. This story comes as a way to remind me of a vision of mindfulness as a way of life through heightened awareness, and that all is connected.

—George Knox, *Meditator*

I have found mindfulness to be especially helpful when talking to clients, be it an interview in my office or in the courtroom, so that I am able to truly listen to what the client has to say. There can be so many things going on, and so many thoughts in my mind, that I find myself struggling to be in the moment. This is when taking a few deep breaths has proved invaluable. Even after only taking a few breaths — aware of the sensations of breathing — I find myself becoming more present and attentive. This practice has also been helpful when in trial, especially during jury selection and prior to cross examination, two areas when keen observation and listening skills are crucial.

—Robert Coppel, *Miami-Dade Public Defender's Office*

I was asked to step in at the 11th hour on a matter that had been ongoing for years to assist in preparing responses to numerous objections to discovery. Needless to say the responses were due in short order. The day before the responses were to be filed, I was working on a holiday; I had been in the office very early and was very focused, working feverishly, and was very stressed. My daughter called me to chat but I was conflicted as I really needed to complete the task at hand. My daughter sensed my tension and said, “Mom, you need to check your snow globe!” That caused me to pause, smile, catch

my breath (which I desperately needed), refocus, and move on. You see, I had shared with my daughter something Scott Rogers had shared with my firm when he first introduced mindfulness to us, which was when our minds are cluttered and stressed, it is as if you had shaken a snow globe. When a snow globe is shaken, you cannot see through it. You have to wait until the snow settles in order to see clearly. With mindfulness, we can calm our snow globes so that we can see clearly and be more effective lawyers (and people). To this day, I keep a snow globe on my desk as a reminder of that day in particular, and in general to remember to “check my snow globe” periodically.

—Debi Galler, *Berger Singerman LLP*

I was representing a client in a rather litigious matter and out of nowhere, an opening to settle the case emerged, and we scheduled a mediation. I remember feeling uncomfortable in my skin and anxious the first time I met opposing counsel, whom I believe was driving a lot of the unnecessary litigation and defensive positions. Ultimately, the deal fell through. The next day, I received an accusatory letter founded on untruths accompanied by a motion for sanctions. To complicate matters, we were in front of a judge who tended not to side with plaintiff's attorneys. Needless to say, I was genuinely scared of the potential sanctions and felt it necessary to consult with an ethics attorney. I cancelled all of my plans and spent many late nights and weekends at the office. This case even entered my dreams — a first for me. The only thing I didn't give up during this period, however, was regular meditation and yoga practice. Though the situation and subject matter often felt constrictive, I was able to frequently remember my breath and hold onto the bigger picture. During depositions, I would often close my eyes and take a conscious breath as I thought of my next question or where I wanted to head next. This intentional slowing down helped me remain present and as much in control of the situation as I could be. Overall, the practice served as a healthy balance to the discomforting parts of the case and also helped me remain grounded and not get lost in the exhilarating parts of the case. The matter turned out very well for my client and I am grateful for mindfulness practice for helping me not get lost during this intense period.

—Douglas Chermak, *Lozeau Drury, LLP, (Oakland, CA)*

One afternoon, I was scheduled to present a seminar and confronted numerous obstacles. I struggled through horrendous traffic only to learn that the coordinator had provided an incorrect address. When I finally arrived, the AV equipment was not working and some of my co-presenters were not prepared. Feelings of anger and thoughts of impending disaster were quickly penetrating my being. Fortunately, my mindfulness practice caused me to be aware of these thoughts and feelings (and my rising heart rate), so I elected to use mindfulness to push my “reset button.” I walked out of the room, found a window, looked out at the sky and trees with a soft focus, paused, closed my eyes, and focused on my breath for a few minutes. After these few moments, I regained a calm perspective on the situation and was able to return to the presentation room and respond with positive energy and productive suggestions.

—Jan Jacobowitz, *University of Miami School of Law*

Courtesy of the Florida Bar Journal

Mindfulness Tips

Throughout the workday, there are moments when I am waiting for something. Waiting for the computer to start, waiting for a document or email to open, on hold on the phone, waiting for the elevator. Rather than get frustrated or annoyed, which I used to do, I now use it as an opportunity to practice a mindfulness exercise known as "STOP." Stop. Take a Breath (or two or 10). Observe. Proceed. I turn what was otherwise an annoying moment into one that is very refreshing. It allows me to check in with myself, dispel any stress or anxiety, take a mini vacation, then get back to work.

—Debi Galler

Sometimes when the phone rings or I am about to make a call, I put my hand on it and pause for a moment (one ring's worth will do) and notice the experience of mindful presence. Then I pick up the phone and proceed.

—J. Patton Hyman

I have found it helpful to pause and sense my breath, body, and the activity of my mind between tasks. Doing so contributes to deliberate and clear thought, the efficient structuring of work projects and time management, lower levels of stress, and overall satisfaction during the day. The pause helps me remember during overwhelming times that I am doing my very best (which, of course, is all that I can do), and during times of tedium or elation that "this too shall pass." I have also found that this pause helps me be less reactive to another's hostility.

—Chelsea Gaberdiel

Before entering any situation you anticipate to be stressful, like a difficult hearing or a telephone call with a contentious adversary, pause for a moment, feeling your feet making contact with the floor and coming into

awareness of your body as a whole, letting go of any sensations of physical and mental tension while taking a few, deep breaths.

—Judge Susan Miles

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Every day for 20 minutes I practice mindfulness in my office, usually by listening to a guided recording. I have done this for many years and find the following to be helpful: 1) Pick a time each day; 2) make it a habit; 3) let people know — they will be sympathetic; 4) close your door; and 5) just do it. Not perfectly; just regularly.

—Harley Tropin

For 10 or 15 minutes twice a day I sit peacefully. I relax and think about nothing or as little as possible.

—Justice Stephen Breyer
CNN interview with Amanda Enayati,
"Seeking Serenity: When Lawyers Go Zen," May 11, 2011

Since consistency is key, I have found the greatest success in waking up a little earlier than normal and meditating in the morning, before

the caffeine, emails, phone calls, deadlines, and deliverables render meditating unlikely or impossible.

—Tony Recio

"Listen to your breath" is a mantra frequently repeated by my yoga teacher. For me, that act of listening to my breath is one of my most centering acts. We have many ways to make this personal connection with our breath. For me, I am committed to daily walking. During my daily walks, I enjoy the sounds of nature around me. Sometimes I walk with close friends, and sometimes I walk alone. I never ever listen to music when I walk. I love music, but during my walks I prefer to hear my breath, and also my thoughts, and take the opportunity to use the time to reflect on dreams and goals, as well as personal challenges. The movement of walking stimulates the breath, as well as the occasion for me to listen deeply to that breath. Whether you walk, or engage in another form of daily practice, keep listening to that breath. Observing and remaining aware of your breath enhances every moment in life and awakens us, as Mary Oliver so eloquently notes, to "the unexpected joy of being alive."

—Dean Janet Stearns

I find it helpful to create white space on my calendar; space in between appointments, depositions, and court appearances when there is nothing scheduled. Even just 15 or 20 minutes of white space makes a huge difference in my day. That way I'm not running flat out; and when things run over, I'm less stressed. Those white spaces — small oases — give me time to slow down, think, reflect...and just breathe.

—Walt Hampton

I try to practice amazement at the commonplace. When I am amazed

Courtesy of the Florida Bar Journal

that clean water flows out of my tap with the gentle twist of a nozzle, doing the dishes is much more enjoyable.

—Christina Sava

Prior to any calendar in which I have to meet with two other judges to tentatively resolve five to 12 appeals and hear oral arguments, I leave my house very early and stop to sit and meditate over tea or coffee at a quiet vegan restaurant. This helps me to relieve the stress of the calendar and to center my thoughts. Also, during exhausting days, I will close my door, ask my staff not to interrupt, and I sit for 15-20 minutes, focusing on my breath.

—Judge Donn Kessler

I try to bring mindfulness to the walking I do during the day. I have a tendency to walk fast and mindlessly, usually thinking about the next thing I have to do. So when I am walking, I try to just walk — no emails, calls, or texts on my cellphone. I try to feel my feet on the floor and perhaps say hello or smile to people walking by. This helps me to slow down and bring more mindfulness into the flow of my day.

—Alice Lash

Often I will look up from my desk or look around while I'm walking or driving, get someone in my line of sight, and say, silently, to myself, "I wish you well," or "have a really nice day." Just thinking about someone else and wishing them well relieves stress. It fosters a positive state of mind that helps me turn back to the task at hand (thinking or planning) with open-mindedness and greater care for the other people involved.

—Judi Cohen

When I find myself starting to experience stress, I stop, take a breath, and try to look at the situation objectively, getting the sense I am observing it from the outside. This is crucial to my getting out of the reactive mode. Having engaged with stressful situations in this way over many years, it is much easier now to step back and get this perspective,

and respond (rather than react) to challenging situations. I am grateful every day for the benefits of my mindfulness practice and in particular for the space and calm it brings to my life.

—Judge Colleen Brown

"I was mortified when I started my journey of the study and practice of mindfulness by how often I interrupted others. I have worked hard to reduce my interruption rate. One tip that I use and recommend is to keep track of how long I can go without interrupting."

I find that body awareness and physical movement can break the daily rut and bring a fresh perspective on life. The movement can be vigorous, like jumping, or subtle, like deep breathing. Sometimes, during the day, when I am getting tired or feel stuck, I move my body for a few minutes and inevitably feel energized, more alert, and even happier.

—Professor William Blatt

When I want to practice mindfulness during the day, I make sure to do a sitting before lunch because I know that I will feel the benefits for the rest of the day. One can always find a couple of minutes.

—Jonathan Erbstein

Mindfulness helps me to listen carefully to others and to listen to my own body. Many of those who appear before me appear without a lawyer. People in court without a lawyer tend to be very emotional and may not present their arguments in a coherent or logical way. In addition to outbursts, many

self-represented repeat themselves over and over, even if I have already ruled. Practicing mindfulness gives me the ability to listen carefully through the emotions to try to understand the underlying argument and also helps me measure my response when I become frustrated — breathing, listening, and consciously controlling my voice and reaction. This helps me avoid escalating a tense situation, which is good for the nonlawyer, for me, and for others in court.

—Judge Laurel Isicoff

I was mortified when I started my journey of the study and practice of mindfulness by how often I interrupted others. I have worked hard to reduce my interruption rate by staying more present in my communications with others. One tip that I use and recommend is to keep track of how long I can go without interrupting. I suggest that if you are like me, it will be harder than you might think. In addition to being more courteous and less rude, I have gathered more and better data about myself, my counter-party, and the environment around me by listening and observing more intently and interrupting less.

—Paul Steven Singerman

When I find myself in a situation where I feel irritated by someone's actions, I notice my thoughts and emotions, pause, and internally encourage myself to find compassion for that person and where he or she may be coming from...and sometimes that person is myself. By consciously infusing compassion into moments when I'd least expect to feel it, I diffuse my irritation and more thoughtfully, calmly, and productively address situations.

—Marla S. Grant

I like to take five deep, slow breaths before I begin an assignment. It is a brief exercise that I can practice multiple times a day for every assignment. These breaths do not take up much time, and they help focus my thoughts on the task at hand.

—Greg Accarino



MINDFUL LISTENING

AN INTERVIEW WITH PAUL STEVEN SINGERMAN

As trusted advisors, lawyers are looked to for their expertise and guidance. A key component of the skill set necessary for effective lawyering is listening. Notwithstanding the importance of effective and efficient listening, it is rarely taught in law school. And, in practice, bad listening habits and practices are often modeled by senior lawyers. In a fast-paced, distracting (technology oppressed?), emotionally charged, and stressful profession, listening can be compromised. And because listening is largely an internal process, we may not even realize that we have become distracted, or otherwise that our listening has become impaired. Listening is regarded as so consequential to the smooth flow of commerce, relationships, and well-being that in recent months national periodicals such as the *New York Times*, *Forbes*, and the *Wall Street Journal* have written about and offered tips on effective listening.

Yet, even when one “knows” what to do to be a more effective listener, it can be challenging to do so in the middle of a heated conversation or when one is distracted. In many cases a prerequisite to “active,” “engaged,” and “effective” listening is a quality of self-awareness and resilience that allows one to remain present. As a growing number of lawyers are realizing, mindfulness practices can help to tone down some of the internal impediments to maintaining active and engaged listening.

We spoke with Paul Steven Singerman—who has been discussing “mindful listening” with lawyers, judges, and law students for almost a decade—to more fully flesh out how mindful listening can

play a meaningful role in the life of a lawyer. Paul is co-chair of Berger Singerman LLP and is nationally recognized for his work in large and complex restructuring, insolvency, distressed business mergers and acquisitions, troubled loan workouts, and bankruptcy-related litigation. Paul launched the firm’s first mindfulness program more than six years ago with the goal of providing colleagues with a space and opportunity to learn how to enhance their data-gathering skills through heightened self-awareness and to enhance their personal and professional performance and relationships. Paul frequently speaks and writes about mindfulness matters for lawyers and judges.

GPSolo: Thank you, Paul, for taking the time to explore mindful listening with the readers of *GPSolo*. You have been sharing mindfulness with lawyers and judges for many years and were one of the first to discuss the importance of mindful listening. Of all the subjects you could focus on, why listening?

Singerman: I’ve been zeroing in on mindful listening in my professional life for three principal reasons. The first is that I believe that lawyers, speaking very generally, are poor listeners. Second, I believe that lawyers are under a dreadful misapprehension that they appear to be smarter when they are talking instead

of listening. And third, I believe that the legal profession has championed the notion that early interruption means that the interrupting lawyer is really smart and has already seized the point that her or his counterparty is attempting to make. I am convinced that these are unfortunate notions and habits that are counter-productive to the goals lawyers wish to achieve and, secondarily, not good manners.

GPSolo: What are the costs of being a poor listener?

Singerman: First, and I think most fundamentally, when one is not engaged in mindful, active listening and certainly when one interrupts a counterparty, much of the data that the counterparty was willing to offer for the asking is potentially forever lost, or at least will take longer to obtain. If I’m interrupting my counterparty and the counterparty was comfortable sharing what really mattered, their comfort may be compromised. Also, in an oral communication, there are nuances. There are seeds planted to invite follow-up questions, little teasers in which the speaker is taking a risk to see if the speaker’s counterparty—the putative listener—will pick up a subtlety and ask the next question. If the speaker is uncertain about whether a particular point is worthwhile to share,

MINDFULNESS IN ACTION

Being more aware of our thoughts, feelings, and sensations in the midst of conversation can enrich the experience for everyone.

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is appropriate to share, is safe to share, and the listener misses it, again we don't know what data we could have obtained. And I don't mean in this data-gathering model to suggest anything that's gaming the system. To the contrary; I think that it's actually contributing to a way of interacting and behaving with one another that, in all likelihood, would solve a lot of problems and be immensely more efficient in communicating and exchanging data.

Data can be lost forever when one is not engaged in mindful, active listening.



GPSolo: Thus far we have discussed the benefits of mindful listening. You also share with lawyers how mindful listening can be its own mindfulness practice.

Singerman: Yes. A good example can be drawn from a basic mindfulness practice where one establishes the breath as the object of attention. In this practice, when attention wanders from the breath, and the mindful practitioner realizes this, she returns attention to the object. This can be helpful for steadying the mind, improving focus and concentration, and regulating emotional reactivity. The key is noticing—the awareness of one's mind wandering. With mindful listening, the object of one's attention is the speaker and what she or he is saying. So that is the object of attention, and the mindful piece is the awareness brought to the experience of listening. Then, when the listener realizes “Oh, I'm thinking about something else,” she becomes aware that the mind has dashed off and brings her attention back to listening. So, too, when the listener begins to feel the pangs of agitation—for example, mounting anger or frustration, and with it the impulse to interrupt, talk louder, or end the conversation—she becomes aware of

the agitation, and, rather than act out on these impulses, she observes them. Many new to mindfulness find this to be counterintuitive, and, indeed, it takes practice. So it is helpful to practice traditional mindfulness exercises such as focusing attention on the breath to develop these skills in a less-provocative environment. And it can be very useful to practice “mindful listening” in the midst of conversation. In this way, it is both a means to an end (more effective

communication and outcomes) and an end unto itself (becoming more mindfully aware).

GPSolo: Do you have a suggestion or instructions for a “mindful listening” exercise?

Singerman: Yes, an interesting exercise called “Do Not Interrupt” invites you to see if you can go for a chosen period of time without interrupting anyone. Let me begin by saying it's not about getting it perfect, which is why it's called a practice. I would start one's journey with what may be an achievable goal. For example, “I'm going to endeavor not to interrupt during a conference call that I have scheduled this afternoon.” One call. See how it goes. I believe that the goal of not interrupting during a single communication, or a series of communications, is going to prove to be immensely harder than one first thinks. For most of us, interrupting is so chronic as to be unconscious, unreflected upon, so natural. So target a conversation, target a conference call, target one meeting. In time, you may go a whole day. The key, however, is not merely to not interrupt, but to gather data during the moments of *wanting to interrupt*. In these moments, you can inquire how it feels to be aware

of the urge to interrupt, noting things you want to say, and even develop the ability to sit tight during such times and see what happens next. I submit to you that the discipline of the resistance to interrupting and working through it is no different from any other discipline and exercise. It takes a while to develop any skill, whether it's driving a car, or riding a horse, or working out in the gym. And sometimes it's not linear; it's a process, and there is in my estimation a high likelihood that consistently focusing on this awareness will result in the distraction of the resistance waning, and the benefits of not interrupting and gathering more and richer data will be profound.

GPSolo: In an article you wrote for the *Florida Bar Journal* on mindfulness, you referred to mindfulness practice as a form of data gathering—something you have already alluded to—and to the three buckets of data being (1) one's self, (2) one's counterparty, and (3) the environment. How does this connect to mindful listening?

Singerman: The first bucket, one's self, is for me the foundation of every other mindfulness practice. I know that sounds like a grand statement, but I think that's right. My ability to mindfully gather data from my counterparties, which is the second bucket, or from the environment, the third bucket, is enhanced or impaired by the level of my own self-awareness. The less self-aware I am of my thoughts, my feelings, my body sensations in the moment, the less accurate, rich, and robust will be my perception of the data being offered by my counterparty or the environment. Self-awareness is a filter. The more self-aware I am, the purer the data is that I take in, and the more clearly I can perceive it. In contrast, the less self-aware I am, the more contaminated, the more imperfect, the less complete the data I take in. And the decisions I make are directly dependent on the data I gather. Through the “Do Not Interrupt” practice, you become aware, very quickly, of a lot of data about the first bucket—yourself—and by becoming more skillful at being aware, observing, and, ultimately being less reactive, greater self-awareness arises and with it greater capacity to listen more

deeply to another and establish in their estimation that you are, indeed, listening such that they feel heard. That can be a game changer.

GPSolo: Some believe that practicing mindfulness is about clearing the mind of all thoughts or to not feel unpleasant emotions.

Singerman: I certainly do not believe that an end product of the study and practice of mindfulness is to forever dispatch unwanted thoughts, feelings, or sensations in the moment. I would submit to you that that's impossible. I think that the goal is to have the awareness, be it of a thought, a feeling, a sensation that may be impacting the way I am receiving data. Frequently, it is an agitating experience that prompts me to react by interrupting or to begin formulating my next question—in which my listening has dropped significantly—and the great benefit in that moment is that I do not interrupt. One of the disciplinary tools that I use, which I don't think is terribly common among lawyers in the business setting, is sharing with my counterparty some of these thoughts, feelings, and emotions—to explicitly put them out there in an effort to help dispatch them, to acknowledge them and come back to the subject of discussion. That said, I think it takes a good deal of authenticity and a willingness (and courage) to be vulnerable to do so—but it can make all the difference. In all likelihood your counterparty is having a similar experience. But it calls for awareness of one's experience to develop the skills to effectively communicate amid such challenging moments, to even take a considered step in this direction, and mindfulness practices help develop this capacity. It should be no surprise that this is useful in one's personal life as well.

GPSolo: How long did it take for you to detect any benefits or changes after you began to practice mindfulness—and mindful listening?

Singerman: I noticed profound changes nearly immediately. Now what does that mean? Does that mean I was instantaneously a better listener? No. I think the most profound realization was how dreadful my listening practices had been

before, how much I interrupted unconsciously, unmindfully, and with it a sense of regret for what I had missed along the way. I think this is an ongoing journey for me. I hope that I can continue to make net progress. It's not always linear. I have interactions with others in which I kick myself when I reflect on having been a sub-optimal listener. Did I miss X, Y, or Z? How can I have participated in that conversation and feel uncertainty now about a point that is as potentially important as this one? It's a journey. It's a process.

GPSolo: A little earlier when offering the “Do Not Interrupt” practice, you said it was not about being perfect. Lawyers do tend toward perfectionism.

Singerman: Seeking perfection may be one of the biggest distractions of all. In my life and in our law firm we've identified a core value of *continuous improvement*. I'm much more comfortable talking about a goal of continuous improvement than I am of perfection because I'm not sure I understand the connection between perfection and the human condition generally. And way beyond the scope of mindful listening, but I think squarely within the scope of enhancing our performance in all we do, I think that there is a role for being kind to ourselves and forgiving ourselves when we miss the mark. And I believe this notion of perfection, this theory of something called perfection, can be a cruel taskmaster.

GPSolo: Recently you've begun to discuss how mindfulness practice can help to “control the future.” Might you elaborate, as this sounds a bit too good to be true.

Singerman: Yes, I know it sounds grand, but in this thinking I am doing about this subject I can see direct and profound benefits. It goes like this: If, as a result of mindful listening, I am better able to understand my counterparty's point and I haven't interrupted and missed crucial data by not being fully engaged in receiving the data and getting it wrong, I forbear from next comments or actions that could take my life and the subject matter of the discussion in an unnecessary, inefficient, or even injurious direction. In this way, I've controlled the future by

not having to spend time later fixing the problem that might have been avoided in the first instance.

GPSolo: Any closing comments?

Singerman: I find that I fare better in my personal and professional life when I am mindfully listening and gathering data about myself and others. I'm reminded of when we shared with our children how beneficial it can be to refrain from making major decisions when you're tired, dirty, or hungry. Now, how do I connect those dots? With awareness. The awareness of fatigue or being tired, the awareness of being hungry or out of sorts, or being dirty and uncomfortable, is closely connected to an awareness of our thoughts, feelings, and body sensations. And so in my personal life, a decision to defer executing because of an awareness of some thought, feeling, or sensation that may impair judgment is huge. Secondly, in my dealing with friends, my wife, our daughters, I am aware, for a very long time regrettably, before I began my study and practice of mindfulness, that I wasn't being respectful, I wasn't being present and doing all I could to give my counterparties, my family, my friends, my colleagues at work, the attention that they deserved by being less than a mindful listener, by thinking I could multi-task, by not turning around and listening to them, by not sometimes saying, “I want to give you my full attention, but I can't do that right now. This is important for me. Can we talk at a different time?” And I think that it's improved the communication flow with my family members, friends, and colleagues, and they've appreciated the respect even when the request is to speak at a different time. To adopt in practice and study the discipline of mindful listening doesn't mean that every counterparty controls the calendar and agenda of the listener's day. It doesn't mean that I have to accept the schedule of my counterparty and drop everything to focus on the counterparty at that moment. And one of the tools of mindful listening can be a clear communication about when one is not capable of showing up to mindfully listen. ■

Faculty

Paul S. Singerman is co-chair of Berger Singerman LLP in Miami and leads the firm's Business Reorganization Team. For decades, he has been nationally known for handling complex restructuring, insolvency and bankruptcy cases, including loan workouts and cross-border matters. Best known for his representation of debtors in corporate reorganization cases and high-stakes litigation, Mr. Singerman also represents creditors' committees, lenders, large unsecured creditors, asset-purchasers in § 363 sales and trustees. He also has experience in large fraud cases and "bet the company" litigation cases. Mr. Singerman writes and speaks frequently on a wide variety of bankruptcy and restructuring-related subjects. He has been a Fellow of the American College of Bankruptcy since 2003. Mr. Singerman has been a member of the Business Law Section of The Florida Bar for 33 years. He received his B.A. with highest honors from the University of Florida and his J.D. with honors from the University of Florida Frederic G. Levin College of Law, where he was a member of the Order of the Coif and Omicron Delta Kappa.