

VENTING OR VIPASSANA? MINDFULNESS MEDITATION'S POTENTIAL FOR REDUCING ANGER'S ROLE IN MEDIATION

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"I haven't lost my temper in 40 years, but pilgrim, you caused a lot of trouble this morning that might have got somebody killed and somebody ought to belt you in the mouth. But I won't. I won't. *The hell I won't.*"

John Wayne in *McLintock!*¹

American culture is suffused and infatuated with anger. Politicians strive to placate the "Angry White Male," whose antagonisms also find expression in road rage, overheated talk radio, violent video games, and players-fans skirmishes at professional sporting events. American media churns out alarmingly vivid images of violence, and the ominous tendency for teenagers, in particular, to act out these lurid fantasies of "righteous wrath" dramatizes the nexus between this potentially toxic "consumption of cultural items" and anger.² Vietnamese expatriate monk Thich Nhat Hanh observes that Americans "cannot speak about anger, and how to handle our anger, without paying attention to all the things that we consume, because anger is not separate from those things."³ Exemplified by the iconic John Wayne and his always-unsuccessful attempts to restrain his wrath, American film and television have actively reinforced the concept that suppressing anger is not only unhealthy, but unmanly as well. Portrayals of the legal process bolster this perspective, with gifted actors like Jack Nicholson and Al Pacino providing indelible images of "going off" in courtroom settings.⁴ Even a warts-and-all depiction of the jury system, in the film "Twelve Angry Men," is comprised of a series of intense outbursts

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¹ *McLINTOCK!* (Paramount Pictures 1963).

² THICH NHAT HANH, *ANGER: WISDOM FOR COOLING THE FLAMES* 17 (2001).

³ *Id.* at 22.

⁴ . . . *AND JUSTICE FOR ALL*, (Pacino's defense lawyer Arthur Kirkland shouts, "The whole trial is out of order!") (Columbia 1979); *A FEW GOOD MEN*, (Nicholson's Colonel Jessep growls, "You can't handle the truth!") (Columbia, 1992).

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of jurors' venting and hostility contrasted with heroic holdout Henry Fonda's grace under pressure.⁵ Fonda's rationally-rooted battles with the emotional other jurors—whether a vile bigot, or a lout who would rather be at the ballpark—culminate in explosions of self-shaming anger. Justice prevails—but few would advocate the raw, bilious, visceral exchanges that moved it along. Fewer still would contend that the bigot or the ballpark lout were somehow sensitized, transformed, or *improved* by their encounters with the legal system.

Americans' laissez-faire approach to anger also draws inspiration from the "Angry God" of reinvigorated fundamentalism. As Buddhist scholar Robert Thurman notes, "[a]nger is not really thought of in the contemporary religious West as that serious a problem. It's kind of like a natural phenomenon, like a storm or a bolt of lightning."⁶ Widespread socio-religious reinforcement facilitates anger's status as "the most seductive of the negative emotions," propelled by a "self-righteous inner monologue" that "fills the mind with the most convincing arguments for venting rage."⁷ Anger's pride-of-place in the American psyche justifies Thurman's assertion that "[a]nger, its profile, its anchoring habits, its systematic cultivation and channeling into socially internal and militarily international violence, is part of the disciplines taught for membership in our culture."⁸

I. MEDIATION AS AN ANGER CORRECTIVE

Recognizing the scope and sway of anger in American life, "prominent books on conflict and negotiation [have] suggested that by venting their anger, parties engaged in negotiation can allow anger to dissipate and thereby proceed more quickly to more productive modes of conflict resolution."⁹ "Mediation is a process that puts emotion back in," venting proponents contend, thus "[f]or the benefit of the parties and for greater success, you should

⁵ *TWELVE ANGRY MEN* (United Artists Films 1957).

⁶ ROBERT A.F. THURMAN, *ANGER* 17 (2004).

⁷ DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* 59 (1995).

⁸ THURMAN, *ANGER*, *supra* note 6, at 21.

⁹ Keith G. Allred et al., *The Influence of Anger and Compassion on Negotiation Performance*, 70 *ORG. BEHAV. AND HUM. DECISION PROCESSES* 175, 176 (1997) (arguing that insufficient research into emotions' impact on conflicts has allowed venting and other counterproductive strategems to take root).

deal with emotions rather than let them fester.”¹⁰ “Once you recognize strong emotion,” mediators are advised, “you must acknowledge it,” because “[a] party will not let go of emotion and be ready to move on until he knows you have recognized that emotion.”¹¹ Alternative Dispute Resolution (ADR) advocates claim that mediation’s efficacy stems in part from its provision of “a safe forum for airing grievances and venting emotion.”¹²

Christopher Moore’s highly-influential text, *The Mediation Process*, characterizes the venting rationale as reflecting mediator concerns that (1) “the party needs a physiological release for unexpressed feelings” that will otherwise thwart “focus on substantive issues until this discharge of feelings has occurred;” (2) the party needs to emphasize the depth of their emotional ties to an issue; (3) the expressing or releasing of emotion will help clarify the parties’ relationship and the issues; or (4) the “direct expression of emotions is culturally expected and acceptable.”¹³ Moore believes that such “ritualized venting” has value if it “permits a productive psychological release” without “damaging the delicate relationship between disputants.”¹⁴ However, he cautions that venting-as-vengeance will unravel any connection the parties have developed, and recommends that mediators “structure negotiations so as to limit emotional expression[!]”¹⁵ Another advocate of unleashing emotions in mediation warns that “it is also critical to ensure that the venting remains constructive[!],” as if recrimination and accusation could somehow be lured back into the bottle.¹⁶

These mixed messages parallel Buddhist nun Thubten Chodron’s perplexed reaction after meeting with a group of ADR advocates. After Chodron had outlined the Buddhist philosophy of striving to *eliminate* destructive emotions, the assembled mediators retorted that “[a]nger is necessary and beneficial be-

¹⁰ Melinda Gehris, *Good Mediators Don’t Ignore Emotion*, 46 N.H.B.J. 28, 29 (2005) (asserting that mediators can “manage” or “process” venting, if they prevent blaming and accusations from arising).

¹¹ *Id.* at 32.

¹² Daniel Bowling & David Hoffman, *Bringing Peace into the Room: the Personal Qualities of the Mediator and Their Impact on the Negotiation*, 2000 NEGOTIATION J. 5, 6 (2000) (reflecting Buddhist concepts of being “Present,” of overcoming personal biases and bringing a calming, hyper-awareness to mediation).

¹³ CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* 173-74 (rev. 3d ed. 2003).

¹⁴ *Id.* at 174-75.

¹⁵ *Id.* at 181.

¹⁶ Gehris, *supra* note 10, at 35.

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cause it gives us information about what is wrong!”¹⁷ They emphasized that anger served as a sort of moral compass for determining “just from unjust, acceptable from unacceptable” in a mediation session.¹⁸ Anger, in this context, serves as a barometer for measuring the intensity of emotions, which must be surmounted before addressing the underlying *interests*, as opposed to negotiating *positions*. “Emotions,” in effect, “fix a conflict, giving it shape and consistency,” so that avoiding anger and other strong emotions “does not allow the parties to reach the real issues at hand.”¹⁹

The ubiquity of venting in domestic relations and workplace mediation stems from a similarly flawed analysis of unleashed anger as a corrective to power imbalances. Yet heated accusation and recrimination will pass—and vanish almost as quickly as the illusive threats they present to patriarchy or economic dominance, as “the frantic agitation of blame is unnatural and temporary.”²⁰ As Thurman notes, “[e]xploding in anger is not the sign of righteous resistance to oppression—it is the final capitulation to oppression, the surrender of free consciousness and controlled forcefulness to blind impulse.”²¹ Exploding in vengeful anger ignores how “we can be much more forceful without anger, much more effectively aggressive without hatred.”²²

A second, equally entrenched justification for venting in mediation draws upon Freudian psychological theory. The “hydraulic model of anger” asserts that pent-up frustration and anger can “build up inside an individual like hydraulic pressure” that *must* be released to avert an emotional meltdown.²³ Red-faced John Wayne’s full hydraulic of anger *must* find release in a shouted challenge—or a roundhouse right. Finally, biologists have portrayed anger as a “Protective Biological Response” which was “hard-wired into our reptile brain” to ensure our evolutionary survival.²⁴

¹⁷ THUBTEN CHODRON, *WORKING WITH ANGER* 33 (2001).

¹⁸ *Id.*

¹⁹ Gehris, *supra* note 10, at 28.

²⁰ SAKYONG MIPHAM, *RULING YOUR WORLD: ANCIENT STRATEGIES FOR MODERN LIFE* 97 (2005).

²¹ ROBERT THURMAN, *INNER REVOLUTION: LIFE, LIBERTY, AND THE PURSUIT OF REAL HAPPINESS* 174 (2d ed. 1999).

²² *Id.* at 173.

²³ Brad J. Bushman, Roy F. Baumeister, & Angela D. Stack, *Catharsis, Aggression, and Persuasive Influence: Self-Fulfilling or Self-Defeating Prophecies?*, 76 *J. OF PERSONALITY AND SOC. PSYCHOL.* 367, 368 (1999).

²⁴ CHODRON, *supra* note 17, at 36; Kenneth Cloke, *Journeys into the Heart of Conflict*, 4 *PEPP. DISP. RESOL. L.J.* 219, 220 (2004).

Trying to overcome anger, from this perspective, is akin to trying to stop the sunset.

II. VENTING: SMOKE ALARM OR GASOLINE?

Contemporary critics of venting-as-therapy challenge the inevitability of anger in negotiations from both psychological and the spiritual perspectives. They speak with one voice, however, in depicting anger as an element that is “inevitably destructive, never justified or useful.”²⁵ “Blaming and complaining,” they contend, “just lay the ground for further discontent.”²⁶ Venting eludes channeling and control, and its proponents fail to appreciate how inept mishandling of a “high-stakes emotion” like anger “can have severe psychological, legal, moral, and physical effects on our lives.”²⁷ Refuting the “hydraulic model,” critics of venting allege that popping the top on participants’ bottles of suppressed frustration disservices *everyone* in mediation, because anger merely uses the ventor “to dish out hard knocks all around.”²⁸ Thus, the “negative energy that anger attracts goes beyond the person who is angry,” and worse, venting’s “polluting effects linger for a long time.”²⁹ Recognizing that “[a]nger has an energy that cannot be avoided altogether,” these critics eschew the ineffectual venting-catharsis theory in favor of confronting anger—albeit only after acquiring the requisite emotional skills and training to recognize and dampen its fire.³⁰ Otherwise, they maintain, the “very nature of anger is that it takes hold of you and deprives you of free will and intelligent choice.”³¹

Psychologist Aaron T. Beck compares anger’s function “to that of a smoke detector: it captures the attention and directs it to the noxious agent.”³² However, while this conclusion would seem to support the conventional ADR perspective that Pema Chodron encountered, Beck adds that since “the threshold for activation of

²⁵ THURMAN, ANGER, *supra* note 6, at 7.

²⁶ MIPHAM, RULING YOUR WORLD, *supra* note 20, at 94.

²⁷ HARVEY B. ARONSON, BUDDHIST PRACTICE ON WESTERN GROUND: RECONCILING EASTERN IDEALS AND WESTERN PSYCHOLOGY 104 (2004).

²⁸ THURMAN, ANGER, *supra* note 6, at 71.

²⁹ MIPHAM, RULING YOUR WORLD, *supra* note 20, at 23-24.

³⁰ THURMAN, ANGER, *supra* note 6, at 6.

³¹ *Id.* at 77.

³² AARON T. BECK, PRISONERS OF HATE: THE COGNITIVE BASIS OF ANGER, HOSTILITY, AND VIOLENCE 261 (2000).

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the mechanism is generally low, there are bound to be false alarms.”³³ Ironically, Beck notes, “[t]he potential for harm in everyday life comes not from the provocative agent but from the anger itself.”³⁴ The “powerful distraction produced by anger,” he observes, “draws attention away from the specific nature of the problem,” and, further, “creates a pressure to act against the provocative agent rather than to engage in constructive problem solving.”³⁵ Under these circumstances,” Beck concludes, “the anger itself becomes the problem.”³⁶

Recent psychological research illustrates that the venting-catharsis theory retains widespread appeal despite its “dismal record in research findings.”³⁷ In fact, “[a] series of studies indicates that overt expression can focus or even increase anger.”³⁸ One group of researchers contends that the enduring lure of the venting-catharsis theory stems from mass media “endorsements” of the concept that “expressing anger or aggressive feelings is healthy, constructive, and relaxing, whereas restraining oneself creates internal tension that is unhealthy and bound to lead to an eventual blowup.”³⁹ However, in his influential book, *Emotional Intelligence*, Daniel Goleman counters that “[v]entilating anger is one of the worst ways to cool down: outbursts of rage typically pump up the emotional brain’s arousal, leaving people feeling more angry, not less.”⁴⁰

Buddhist scholars challenging the venting-catharsis rationale emphasize its *distorting* effects, the “blurred vision” that anger induces, and how this angered perspective “is inaccurate in its assessment of reality [because] it is based on exaggeration or superimposition of negative qualities.”⁴¹ Anger “misapprehends its objects,” and seizing upon the wrong one, “can make one event or phrase into the symbol of an entire relationship.”⁴² “Emotion prevents people from retrieving and using information they would otherwise have at their fingertips,” because a person “gripped by

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 261-62.

³⁶ *Id.* at 262.

³⁷ Bushman, *supra* note 23, at 367.

³⁸ REDFORD WILLIAMS & VIRGINIA WILLIAMS, *ANGER KILLS: SEVENTEEN STRATEGIES FOR CONTROLLING THE HOSTILITY THAT CAN HARM YOUR HEALTH* xvii (1994).

³⁹ *Id.*

⁴⁰ GOLEMAN, *EMOTIONAL INTELLIGENCE*, *supra* note 7, at 64-65.

⁴¹ CHODRON, *supra* note 17, at 21.

⁴² *Id.* at 153 and 85-86.

emotion interprets events to fit how he feels, often ignoring any fact or interpretation that does not fit his feelings.”⁴³ Thurman asserts that an ire-inspired outburst “merely adds internal suffering and stress to outer suffering and pressure,” as the individual engaged in venting is hoisted on his or her own emotional petard.⁴⁴ Kenneth Cloke concurs, observing that venting “communicates disrespect, encourages defensiveness and counterattack, escalates underlying conflicts, and does not accurately express what we are capable of.”⁴⁵ Chodron also laments “self-righteous indignation,” stating that “[g]ood communication involves expressing ourselves in a way that the other person understands. It is not simply dumping our feelings on the other.”⁴⁶

Finally, critics of venting, such as Thich Nhat Hanh, suggest that it actually serves to revitalize anger, noting that “[w]hen you vent your anger, you simply open the energy that is feeding [it]. . . and by expressing anger like that, you are strengthening the roots of anger in yourself.”⁴⁷ In the film *Analyze This*, the psychologist, played by Billy Crystal, suggests that the mobster, played by Robert DeNiro, try “hitting a pillow” to reduce his anger; DeNiro promptly pulls out a pistol and shoots the pillow several times. Hanh holds that other, similar anger-reduction measures are equally—if not as laughably—ineffective. He contends that “[v]enting your anger is a practice based on ignorance. When you imagine the object of your anger as a pillow, hitting the object of your hate, you rehearse your ignorance and anger.”⁴⁸ People who engage in such a folk-wisdom venting remedy, Hanh argues, “have fed the roots of their anger by rehearsing it.”⁴⁹ Additionally, a recent psychological study critical of the venting-catharsis theory found that “[b]ecause activities considered to be cathartic also are aggressive, they could lead to the activation of other aggressive thoughts, emotions, and behavioral tendencies, which in turn could lead to greater anger and aggression.”⁵⁰ The study concluded that “media messages advocating catharsis may be worse than useless,”

⁴³ Gehris, *supra* note 10, at 31.

⁴⁴ THURMAN, ANGER, *supra* note 6, at 70.

⁴⁵ Cloke, *supra* note 24, at 222.

⁴⁶ CHODRON, *supra* note 17, at 23.

⁴⁷ HANH, *supra* note 2, at 116.

⁴⁸ *Id.* at 117.

⁴⁹ *Id.*

⁵⁰ Bushman, *supra* note 23, at 368.

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because “the effect of advocating catharsis may be to cause a general increase in aggressive behavior.”⁵¹

III. MINDFULNESS MEDIATION’S APPROACH TO ANGER

“Mindfulness means to be present, to be aware of what is going on.”

Thich Nhat Hanh⁵²

Through the exercise of mindfulness meditation, Buddhism espouses what Americans would regard as truly quixotic: eliminating the emotional sway of anger *entirely*. This pursuit stems from the Buddhist definition of anger as “an emotional addiction with a conceptual focus, not just raw emotional energy.”⁵³ Daniel Goleman sees that the “fundamental difference” in perceptions of anger is that “Buddhists strive to be totally free from anger, while most Westerners view anger, in the proper degree and situation, as perfectly suitable—and few consider whether we can eradicate it altogether.”⁵⁴ Buddhist philosophy flies in the face of established American stereotyping of anger as a weapon, and as viewers of innumerable John Wayne shoot-’em-ups can attest, you never, ever, give up your gun.

Buddhists realize that “[i]nitially, we may feel vulnerable if we let go of the ‘protective’ shield of anger.”⁵⁵ Buddhist author Lewis Richmond recognizes this uneasy reluctance “to give up the protective coating of your righteous anger,” but emphasizes that “throwing our anger around like red paint” accomplishes nothing.⁵⁶ “There is a big difference,” Richmond stresses, “between feeling angry and acting angry, between experiencing anger’s energy and releasing it carelessly. But whether our angry feelings are destructive or useful is up to us.”⁵⁷

“Up to us” refers to the readily available and accessible pursuit of mindfulness meditation, a venerable Buddhist practice

⁵¹ *Id.*

⁵² HANH, *supra* note 2, at 68.

⁵³ THURMAN, ANGER, *supra* note 6, at 43.

⁵⁴ DANIEL GOLEMAN, DESTRUCTIVE EMOTIONS: HOW CAN WE OVERCOME THEM?: A SCIENTIFIC DIALOGUE WITH THE DALAI LAMA 141 (2004).

⁵⁵ CHODRON, *supra* note 17, at 34.

⁵⁶ LEWIS RICHMOND, WORK AS A SPIRITUAL PRACTICE: A PRACTICAL BUDDHIST APPROACH TO INNER GROWTH AND SATISFACTION ON THE JOB 71 and 66 (1998).

⁵⁷ *Id.* at 66.

which is derived from “an ancient technique focusing on close observation of the breath.”⁵⁸ This deliberative mental exercise, which practitioners claim “allows us to know our present emotional state,” seeks to “diminish” anger, without concerning itself with “why we are angry, only that we are.”⁵⁹ As Buddhist and psychotherapist Harvey Aronson explains:

When cultivated well, mindfulness allows us to observe the feeling of anger so clearly that we can recognize it as a changing experience that doesn't have to overcome us. . .

Cultivating mindfulness to the point of being able to observe the process of the rising and falling of anger—without acting it out and without getting lost in its content—is one effective way of working with and lessening emotion.⁶⁰

Chodron similarly describes the “meditation of observing our anger” as a process of “sitting quietly and instead of paying attention to the storyline behind the anger, simply noting the various physical and mental sensations that arise and pass as the anger flows through us.”⁶¹ American Buddhist author Bhante Henepola Gunaratana likens mindfulness to “a safety net that cushions us against unwholesome actions. Mindfulness gives us time; time gives us choices. We don't have to be swept away by our feelings.”⁶² As Buddhist leader Sakyong Mipham observes, “[t]he coolness of reason—looking at the emotion, questioning where it came from, seeking the source, investigating the object—dissipates the heat of the emotion.”⁶³ With mindfulness, Mipham adds, “[a]n emotion that feels as big as a house can be dismantled brick by brick.”⁶⁴

As one of the basic negative emotions in Buddhism, anger's removal assumes a high priority in meditation. The Dalai Lama describes this effort as one designed to “get at the root, appreciating the causal nexus, the chain, which would then ultimately explode in an emotional state like anger,” in hopes of being able to “stop it at an early stage,” rather than awaiting its full-blown arri-

⁵⁸ STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* 49 (1999).

⁵⁹ ARONSON, *supra* note 27, at 110.

⁶⁰ *Id.* at 109.

⁶¹ CHODRON, *supra* note 17, at 54.

⁶² BHANTE HENEPOLA GUNARATANA, *MINDFULNESS IN PLAIN ENGLISH* 194 (2002).

⁶³ SAKYONG MIPHAM, *TURNING THE MIND INTO AN ALLY* 72 (2004 ED.).

⁶⁴ *Id.* at 70.

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val.⁶⁵ As Buddhist monk Matthieu Ricard explains, “[e]ven though the vast majority of people experience negative emotions at various times, that does not mean that such emotions are inherent in the nature of mind. And if anger itself is not something that is solid,” Ricard asserts, “it means anger is not a property that belongs to the fundamental nature of mind.”⁶⁶ Richmond observes how anger triggers tight, constricted breathing, but how calm breathing exercises can help introduce calm, and asks: “[d]oes our anger cause our tight breathing, or does our tight breathing make us feel angry? From the Buddhist standpoint, the two arise together. Changing one inevitably affects the other.”⁶⁷ Breathing meditation allows practitioners to “insert a wedge of awareness” into their thinking to counter the maelstrom anger unleashes.⁶⁸

Mindfulness practices “emphasize recognizing rather than reacting” to emotions, and in time, progress toward the ability to engage in “observing rather than judging.”⁶⁹ Mindfulness acts to “dismantle the emotion by contemplating it.”⁷⁰ Ultimately, mindfulness practitioners are able “to replace avoidance with a technique to experience negative thoughts and events without being consumed by them.”⁷¹ As Robert Thurman comments, “[t]aking things apart analytically does destroy them in some sense, dissects them, sees through them, confronts their ultimate non-existence.”⁷² By discovering the workings of the “mental mechanics of anger,” mindfulness practitioners develop what the Dalai Lama has termed “an immune system for the emotions.”⁷³ Mindfulness puts our “hot buttons” out of play, and as Chodron concludes, “[o]ur buttons are our responsibility.”⁷⁴

⁶⁵ DALAI LAMA, *HEALING ANGER: THE POWER OF PATIENCE FROM A BUDDHIST PERSPECTIVE* xxi (1997).

⁶⁶ GOLEMAN, *DESTRUCTIVE EMOTIONS*, *supra* note 54, at 80-81.

⁶⁷ RICHMOND, *supra* note 56, at 69.

⁶⁸ 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, 30 (2002).

⁶⁹ Clark Freshman, Adele M. Hayes, & Greg C. Feldman, *Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support*, 7 *HARV. NEGOT. L. REV.* 67, 70-71 (2002).

⁷⁰ MIPHAM, *TURINING MIND*, *supra* note 63, at 69.

⁷¹ FRESHMAN, *supra* note 69, at 72-73.

⁷² THURMAN, *ANGER*, *supra* note 6, at 9.

⁷³ *See id.* at 62; GOLEMAN, *DESTRUCTIVE EMOTIONS*, *supra* note 54, at 168.

⁷⁴ CHODRON, *supra* note 17, at 81.

IV. MINDFULNESS MEDIATION'S SUITABILITY FOR
MEDIATORS . . . AND MEDIATION

As Steven Keeva wryly observes, questions about the value of spirituality for the practice of law often produce the response: “[i]sn’t that an oxymoron?”⁷⁵ A lawyer who is a proponent of mindfulness recounts that “the dominant preconception I encounter is that meditation and lawyering are startlingly incongruous activities.”⁷⁶ Keeva notes that this is despite “the degree to which mediation allows for consideration not only of the parties’ actions [their outer lives] but also their beliefs, feelings, and motivations [their inner lives].”⁷⁷ Akin to concerns about dropping the shield of vented anger, lawyers resist mindfulness and other emotionally-rooted concepts with a “knee-jerk tendency to fall back on adversarial solutions to most, if not all, issues and problems.”⁷⁸ The adversarial system, Keeva claims, “continues to hover above ADR like an elephant over a chipmunk.”⁷⁹ Lawyers remain reluctant to jettison the thick-hided, suspicious attitude that Leonard Riskin labeled “The Lawyer’s Standard Philosophical Map.”⁸⁰

Yet even “textbook” approaches to mediation recognize that “learning about the causes, development, dynamics, management, and regulation of emotions is often critical for effective mediation.”⁸¹ Successful mediators have already internalized the ability to “decode” emotions, so where is the harm in exploring a “body of expertise [which] possesses an exacting system for probing depths of awareness?”⁸² A meditation advocate posits that “mindfulness means that a mediator remains both relaxed and alert, paying attention to the variety of sensory, cognitive, affective, and intuitive stimuli that arise in the heat of a dispute.”⁸³ He notes also that “[t]he practices of meditation and mediation share more than nine letters in common. They are each powerful processes for working

⁷⁵ KEEVA, *supra* note 58, at xix.

⁷⁶ Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOTIATION L. REV. 109, 111 (2002).

⁷⁷ KEEVA, *supra* note 58, at 155.

⁷⁸ *See id.* at 10.

⁷⁹ *See id.* at 102.

⁸⁰ Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 1, 81 (2004).

⁸¹ MOORE, *supra* note 13, at 167.

⁸² *See id.* at 169; GOLEMAN, *DESTRUCTIVE EMOTIONS*, *supra* note 54, at xix.

⁸³ Barry Nobel, *Meditation and Mediation*, 43 FAM. CT. REV. 295, 300 (2005).

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through surface difficulties and confusion in order to contact a deeper, fuller reality which lies hidden.”⁸⁴

The many parallels between mindfulness and mediation are exemplified by Chodron’s *Getting to Yes*-styled approaches to negotiating strategy in advising mindfulness meditators to “separate the person from her behavior.”⁸⁵ Further, Buddhist admonitions to “remove our buttons” coincide with facilitative mediation’s emphasis on getting to the underlying interests, not the emotion-driven positions. The effort to “change the automatic and habitual responses that so often get us tangled in cycles of anger and conflict with others” is a central tenet of both progressive mediation theory and Buddhism.⁸⁶ When William Ury recommends what he terms “Going to the Balcony” (“distancing yourself from your natural impulses and emotions”), he invites comparison with mindfulness measures to cultivate patience that will “give us the mental space to choose appropriate behavior for a situation.”⁸⁷ Ury’s “balcony” is his “metaphor for a mental attitude of detachment. From the balcony you can calmly evaluate the conflict almost as if you were a third party.”⁸⁸ Robert Thurman’s portrayal of mindfulness similarly consists of allowing one to “become conscious of what you were formerly unconscious. You can understand your drives, see where they come from, block the source, and divert the energy for your own use.”⁸⁹ Each practice leads toward following Ury’s dictum to “put on your radar, not your armor.”⁹⁰ Each asks us to “disconnect the automatic link between emotion and action.”⁹¹

Recent research supports the belief that “training to understand and manage strong emotion helps a mediator (1) build tolerance for expression of emotion, (2) develop detachment and reduce stress, (3) inculcate patience and humility, and (4) promote a realistic understanding of outcomes.”⁹² The indispensable skill of active listening is enhanced with meditation, as “[p]aying attention

⁸⁴ *See id.* at 295.

⁸⁵ CHODRON, *supra* note 17, at 101.

⁸⁶ *See id.* at 34.

⁸⁷ WILLIAM URY, *GETTING PAST NO: NEGOTIATING YOUR WAY FROM CONFRONTATION TO COOPERATION* 38 (1993); CHODRON, *supra* note 13, at 28.

⁸⁸ URY, *supra* note 87, at 38.

⁸⁹ THURMAN, *ANGER*, *supra* note 6, at 62.

⁹⁰ URY, *supra* note 87, at 43.

⁹¹ *See id.* at 46.

⁹² Lori S. Schreier, *Emotional Intelligence and Mediation Training*, 20 *CONFLICT RESOL. Q.* 99, 100 (2002).

is the very essence of mindfulness.”⁹³ Riskin contends that “[m]indfulness allows mediators to make better judgments” in that it fosters “moment-to-moment awareness.”⁹⁴ Such awareness provides mediators with what Cloke calls an “omnipartial” view of the mediation experience, and such a “nonjudgmental” understanding facilitates neutrality and more insightful guidance.⁹⁵ Mediators with greater emotional intelligence and insightful self-knowledge “develop a greater ability to be *present* with a wider and wider variety of conflict.”⁹⁶ In this view, self-mastery equates to greater, yet less-intrusive, control over the mediation process. As Cloke notes, “[t]he highest goal in conflict resolution is therefore not simply to become more skillful in resolving disputes, but to become a more meditative person—externally in all our conversations and relationships, and internally in every part of our being.”⁹⁷ Accordingly, “[m]ediating offers mediators the opportunity to put our deepest values into practice in the outer world.”⁹⁸

Personal transformation is a guiding principle of the burgeoning holistic or therapeutic law movement. Reacting to a “spiritual crisis in the legal profession,” these practitioners contend that adversarial-oriented lawyers hinder their emotional potential “by failing to acknowledge that some problems resist left-brain solutions and that the intellect isn’t the only tool available with which to address their own or their clients’ problems.”⁹⁹ In stereotyping spiritual concerns as the exclusive domain of “fuzzy-headed folks with time to contemplate their navels in incense-filled rooms,” mainstream lawyers unwittingly leave valuable insights for ADR practice, in particular, “on the table.”¹⁰⁰ Additionally, the “Buddhist teachings underlying mindfulness meditation make it clear that mindfulness meditation is this-worldly, discourages mystical states of mind, and is compatible with the use of reason.”¹⁰¹ Mindfulness adherents note that, “in the broadest sense of the term, [it] is a global human endeavor, not confined to the Buddhist tradition.”¹⁰²

⁹³ Claudia Kalb, *Buddha Lessons: a Technique Called “Mindfulness” Teaches How to Step Back from Pain and the Worries of Life*, NEWSWEEK, Sept. 27, 2004, at 48, 51.

⁹⁴ RISKIN, MINDFULNESS, *supra* note 80, at 86.

⁹⁵ BOWLING, *supra* note 12, at 12, 21.

⁹⁶ *See id.* at 21-22.

⁹⁷ CLOKE, *supra* note 24, at 237.

⁹⁸ NOBEL, *supra* note 83, at 301.

⁹⁹ KEEVA, *supra* note 58, at 25.

¹⁰⁰ *See id.* at 25-26.

¹⁰¹ CODIGA, *supra* note 76, at 112.

¹⁰² NOBEL, *supra* note 83, at 297.

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Lawyers who disregard or devalue clients' perspectives on the lawyer-client relationship will labor at a disadvantage in mediation, where "relationships take center stage."¹⁰³ Mediation, Keeva observes, "calls on the lawyer as a human *being* in a much more obvious way than litigation does."¹⁰⁴ Mediation counsel who are not cognizant of the process' significant transformative potential will leave not just gains, but a little bit of themselves on the table as well. Riskin believes that "for a person to appropriately implement the strategies associated with the new approaches to mediation," they will require "a set of foundational capacities including awareness, emotional sophistication, and understanding."¹⁰⁵

Training to develop these new capacities is in its infancy, as "most mediation training does not sufficiently teach how to be with, or work with, strong emotions in mediation."¹⁰⁶ Mindfulness-inspired training "could include training people to label positional impulses as they arise rather than acting on them."¹⁰⁷ Ury suggests that overcoming the "barrier of emotion" represents a considerable challenge for novice mediators, who will be drawn toward a strategy "to ignore the emotion and focus on the problem instead, but this is unlikely to work. The negative positions will emerge in the form of inflexible positions. Before you can discuss the problem, you need to disarm the person."¹⁰⁸ Few academically-trained mediators have sufficient insight into curbing the destructive swath of unleashed emotions in mediation sessions, and if pressed or flustered, a likely possibility is that they will fall back on the ready—if valueless—venting-catharsis theory. Thus, while the parties may be ready to take two steps forward, the mediator will be taking three steps back.

Meditation advocates concede that even those eager to investigate the practice will find that "the effects of mindfulness take time," and caution that it alone "will not easily eradicate all of the psychological barriers to rational and wise settlements. . .nor inculcate the conditions for creativity and collaboration."¹⁰⁹ They observe that unlike Asian Buddhist societies, America is characterized by "individualism run amok [and] a social environment that encourages independence rather than support and con-

¹⁰³ KEEVA, *supra* note 58, at 151.

¹⁰⁴ *See id.* at 152.

¹⁰⁵ RISKIN, *supra* note 80, at 83.

¹⁰⁶ SCHREIER, *supra* note 92, at 117.

¹⁰⁷ FRESHMAN, *supra* note 69, at 77.

¹⁰⁸ URY, *supra* note 87, at 53.

¹⁰⁹ FRESHMAN, *supra* note 69, at 80.

nection.”¹¹⁰ Aronson noted that it is “only through appreciating the different place of anger in our culture” that we can we “assimilate guidance” from Asian Buddhist traditions into our lives.¹¹¹ Finally, mindfulness meditation advocates stress that “mindfulness and meditation, like negotiation itself, is less a single destination than a set of possible journeys.”¹¹² As the Dalai Lama has commented, “in the secular context, for ordinary people, through ordinary methods, it is impossible to eliminate all the negative emotions, [but] it’s worthwhile to make the attempt.”¹¹³ Ultimately, mindfulness meditation can help mediators and lawyer-representatives “shut down their internal courtrooms,” and approach the process with truly open, alert, and receptive minds.¹¹⁴

V. FUTURE PROSPECTS: MINDFULNESS AS MEGA-TRANSFORMATIVE MEDIATION

A Buddhist scholar has characterized the East-West divergence on anger and its management in noting that “in India emotions expressed are dangerous and don’t go away, whereas in Manhattan, emotions unexamined and unexpressed are considered dangerous.”¹¹⁵ Asking Americans to imagine lives without openly expressed anger is like challenging them to imagine an autumn without football. Popular embrace of the venting-catharsis approach to anger continues to find ready support in media, pop psychology, and even psychotherapy sources. In contrast, xenophobic Americans find characteristics of foreign cultures, particularly from the Third World, as somewhat unpromising—if not vaguely threatening. “For most Americans,” author James William Coleman comments, “a mention of Buddhism is likely to bring to mind head-shaven monks in exotic robes. . .or some other image of the mysterious and foreign.”¹¹⁶ A mindfulness advocate concedes that otherworldly stereotypes are part of the “key misconceptions about mindfulness meditation that may limit its appeal to law-

¹¹⁰ ARONSON, *supra* note 27, at 24.

¹¹¹ *See id.* at 96.

¹¹² FRESHMAN, *supra* note 69, at 81.

¹¹³ GOLEMAN, DESTRUCTIVE EMOTIONS, *supra* note 54, at 169.

¹¹⁴ CHODRON, *supra* note 17, at 83.

¹¹⁵ ARONSON, *supra* note 28, at 24.

¹¹⁶ JAMES WILLIAM COLEMAN, THE NEW BUDDHISM: THE WESTERN TRANSFORMATION OF AN ANCIENT TRADITION 4 (2001).

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yers.”¹¹⁷ Rationally-focused lawyers are skeptical of any process not embraced and vetted by the academic-intellectual establishment. This reflects a bias born of the fact that “modern psychological theories have their roots in European and American science and culture,” excluding Asian-derived mindfulness and other meditation practices with ancient pedigrees and centuries of successful application.¹¹⁸

Further, in an increasingly adversarial legal culture, mindfulness suffers from the “common misconception in the West that patience equals passivity.”¹¹⁹ Westerners, Americans in particular, frequently “confuse compassion with passivity, sentimentality or Pollyanna idealism;” John Wayne didn’t walk into the barroom with a flower.¹²⁰ Buddhist scholars rebut these stereotypes, noting that “calmness in the face of harm gives us the space to evaluate situations clearly and thus to make wise decisions.”¹²¹ “Being compassionate,” Thich Nhat Hanh observes, “means being intelligent.”¹²² Sakyong Mipham concludes that, “[n]ot blaming doesn’t make us docile, just accepting whatever comes along. It allows us to open our heart to suffering instead of closing it with blame.”¹²³

Buddhists refuse to accept limits on intellectual growth, advocating a “[p]lasticity of the mind,” which posits “an assumption of the mind’s limitless capacity for improvement.”¹²⁴ Keeva notes how other learned professions have now developed “a new openness to contemplative avenues of understanding and a realization that these approaches can complement linear thinking and scientific empiricism.”¹²⁵ Yet a skeptical legal profession refuses to acknowledge what Goleman terms “an alternative paradigm on the mind,” mindfulness, despite its “exacting system for probing depths of awareness that science has not yet considered.”¹²⁶ “Buddhism,” Goleman contends, “offers a wide range of theoretical insights and practical methods” which should find a more receptive audience in relationship-driven professions such as law.¹²⁷ Finally, the exotic or

¹¹⁷ CODIGA, *supra* note 76, at 109.

¹¹⁸ GOLEMAN, *DESTRUCTIVE EMOTIONS*, *supra* note 54, at 72.

¹¹⁹ CHODRON, *supra* note 17, at 28.

¹²⁰ *See id.* at 39.

¹²¹ *See id.* at 28-29.

¹²² HANH, *supra* note 2, at 129.

¹²³ MIPHAM, *RULING YOUR WORLD*, *supra* note 20, at 97-98.

¹²⁴ DALAI LAMA, *supra* note 65, at xxi.

¹²⁵ KEEVA, *supra* note 58, at 51.

¹²⁶ GOLEMAN, *DESTRUCTIVE EMOTIONS*, *supra* note 54, at xix.

¹²⁷ *See id.* at xiv.

mysterious aspects of an Eastern religion should not color lawyers' acceptance of mindfulness, which "lends itself to a secular approach to destructive emotions, since it can be learned without becoming Buddhist."¹²⁸ A proponent asserts that "there is no inherent conflict between mindfulness meditation and pre-existing religious beliefs and orientations," and notes that "both the theory and practice of mindfulness meditation are founded on, and compatible with, reason, analysis, and skepticism."¹²⁹ In sum, "the practices of meditation and mediation complement one another, and their integration offers opportunities for personal, interpersonal, and professional growth."¹³⁰

Recent physiological research has demonstrated mindfulness' potential to reduce the "actual biochemical changes associated with anger and stress."¹³¹ "In some very real respects," studies suggest, "practicing meditation is like taking a fast-acting tranquilizer right then and there."¹³² Studying the "biological footprint of mindfulness—on the brain, the blood, the immune system—is the next frontier in scientific research."¹³³ Mindfulness advocates point to "recent research that convincingly establishes anger as a feeling that arises in response to conditions, not as an instinct or predestined biological necessity."¹³⁴ These promising findings simply reinforce mindfulness' unlimited potential. As Richmond observes, "[a] spiritual practice is not a warm-up or rehearsal but an end in itself, an activity that expresses and develops our inner life."¹³⁵ Another Mindfulness-in-ADR proponent asserts that "meditation offers something more than stress reduction and improved lawyering skills," for it is "a proven method for cultivating deeper insights that touch upon the whole of a lawyer's life."¹³⁶ Lawyer-mediators anxious to reverse the tide of unchecked adversarialism should pay heed to the Dalai Lama's challenge to address the "human suffering (which) stems from destructive emotions."¹³⁷ For after all, he reminds us, "One of our most basic responsibilities as caring people is to alleviate the human costs of such out-of-con-

¹²⁸ *See id.* at 169.

¹²⁹ CODIGA, *supra* note 76, at 110.

¹³⁰ NOBEL, *supra* note 83, at 295.

¹³¹ URY, *supra* note 87, at 45.

¹³² WILLIAMS, *supra* note 38, at 89.

¹³³ KALB, *supra* note 93, at 51.

¹³⁴ ARONSON, *supra* note 27, at 106.

¹³⁵ RICHMOND, *supra* note 56, at 13.

¹³⁶ CODIGA, *supra* note 76, at 109.

¹³⁷ GOLEMAN, DESTRUCTIVE EMOTIONS, *supra* note 54, at xiii.

trol emotions.”¹³⁸ As a mindfulness advocate concludes, “meditation and mediation help participants envision a more harmonious world and encourage them to treat others with respect. Both processes are structured to contain tumultuous feelings and to elicit a sense of calm determination in the ultimate service of peace.”¹³⁹

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¹³⁸ *See id.*

¹³⁹ NOBEL, *supra* note 83, at 297.

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