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Viewpoint: Want to Learn to Think Like a Lawyer? It's 'Elementary'!

Rachel Van Cleave, The Recorder

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Legal education is often described as teaching students "how to think like a lawyer." Indeed, most lawyers will agree that law school pedagogy altered their intellectual approach to problems, arguments and analytical challenges. However, most attempts to define the old saw "think like a lawyer" prove elusive.

Maria Konnikova's book, "Mastermind: How to Think Like Sherlock Holmes," effectively captures what it means to think like a lawyer in a way that is both meaningful and relevant to the transformations occurring in legal education and in the practice of law.

The book contains some great lessons for cultivating the habits of mind that support logical and thoughtful problem solving—attributes needed for success in law school and the legal profession. Lawyers and law students would do well to learn from the literary world's most successful problem solvers, even if he is a fictional one.

Staying Sharp

A significant theme of "Mastermind" is that the brain can be sharpened and made more effective through training—that we can all be more like Sherlock Holmes (without the pipe and other famous vices). This is important for law students to appreciate because it means all law students can improve upon or develop the habits and qualities necessary for success in law school and in practice.

Konnikova emphasizes the habits of mind that account for Holmes' extraordinary ability to solve cases—attention, focused engagement, open-mindedness, imagination and the motivation to continually cultivate each of these qualities. The recent PBS version of "Sherlock" effectively conveys Holmes' high level of awareness and attention to detail such as noticing the signs of nail biting or that a person owns a cat. This ability is supported by Holmes' laser focus and engagement with relevant facts, while avoiding distraction and refusing to jump to conclusions.

Such attributes are applicable to the study of law because a particular case or factual scenario is likely to involve a plethora of information. Law students must learn to distinguish relevant facts from irrelevant. Plus, focus and attention help us remember to check our own

assumptions and biases. Daniel Kahneman explains in "Thinking, Fast and Slow" that our brains easily make assumptions and sometimes fail to recognize that this has occurred. Holmes is quite masterful at not giving into such assumptions. Rather, he questions everything. Like Holmes, law students should strive to be as observant as possible, to question everything and to sift through the collected information to determine what is relevant. What facts are present and which are assumed? An emphasis on focus is especially important nowadays, as we are bombarded with messages and distractions from a variety of sources.

Beyond Memorization

One valuable technique for staying focused is to actively engage facts and materials we strive to learn and remember. Konnikova encourages us to sharpen our minds by playing around with information we want to remember. She explains that "talking it through, making it come alive" is more effective in improving recall than simply thinking about it. Often law students believe that the more time they spend reading and rereading cases and statutes, the better prepared they will be. This is often not true. Instead, engaging the material by using diagrams and charts, explaining it to someone else or writing it out in one's own words are shown to improve recall in class and during an exam by solidifying deep understanding.

The current emphasis in legal education on experiential learning is based, at least in part, on the idea that hands-on application of the law enhances student learning by making the law relevant. These experiences contribute to another quality that Konnikova emphasizes—motivation.

The level of focus and attention necessary to think like Sherlock Holmes demand a great deal of motivation to sustain. One technique to sustain motivation is to adopt a growth mindset. That is, remembering that this manner of thinking can be challenging, but one's ability to do so is expansive. However, it is likely that mindfulness is the most powerful tool for boosting focus and attention.

Know When to Walk Away

While mindfulness may involve meditation, Konnikova points out that mindfulness can be achieved through activity with a meditative quality such as walking, swimming, or as Holmes does, playing the violin or attending the opera. While it may seem counterintuitive to take a break from actively trying to work through a problem, the idea is to "move the problem we have been trying to solve from our conscious brain to our unconscious." Our brains continue to wrestle with the issue, which allows us to return with a fresh perspective. By stepping away for a moment, we are likely to notice hints for solving the problem we missed before. Just as importantly, these practices also tend to reduce stress. Indeed, many law schools, including Golden Gate University School of Law, have added courses to help students cultivate these qualities and reduce stress.

Mindfulness practices also create space for creativity and open-mindedness. While Holmes' approach is primarily characterized by deduction and logic, his problem-solving abilities are extraordinary due to his amazing capacity for creativity and his ability to consider facts *not* present. Imagination, creativity and reflection are crucial qualities for successful problem solving, and they prevent one from jumping too quickly to conclusions.

Another important quality is cultivating a mindset committed to constant learning. I believe this includes an element of curiosity about knowledge, about other people and about ourselves. Embracing the notion that learning never stops helps put setbacks and failures into perspective by considering them opportunities to learn and improve. Konnikova discusses great thinkers who experienced "failure," such as Abraham Lincoln and Albert Einstein, but who were ultimately successful because they "lacked a fear of failure."

All of these qualities may help us think more like Sherlock Holmes, and to be more successful at "thinking like a lawyer." However, these goals should come with a warning: "Thinking *exclusively* like Sherlock Holmes and like a lawyer may be harmful to your health and to your relationships with friends and family."

Law professors should emphasize that the Socratic dialogue, while very important for developing the analytical and problem-solving skills crucial for success in law school, should not be incorporated into other aspects of a student's life. One's family and friends are not likely to appreciate being constantly questioned or challenged to be logical. Mindfulness grounds us by reminding us that there is more to life, and more to practicing law, than just thinking like a lawyer.

Indeed, both the profession and legal education have begun to emphasize habits of heart, which are foundational for one's health and happiness as well as for a successful career in the law. These include empathy, compassion and wisdom, each of which may also be cultivated by mastering mindfulness.

The Recorder *welcomes submissions to Viewpoint*. Contact James Cronin at jcronin@alm.com.

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