ARTICLE

CAN PRACTICING MINDFULNESS IMPROVE LAWYER DECISION-MAKING, ETHICS, AND LEADERSHIP?

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ABSTRACT

Jon Kabat-Zinn, the founder of mindfulness-based stress reduction, defines mindfulness as paying attention in a curious, deliberate, kind, and non-judgmental way to life as it unfolds each moment. Psychologist Ellen Langer defines mindfulness as a flexible state of mind actively engaging in the present, noticing new things, and being sensitive to context. Langer differentiates mindfulness from mindlessness, which she defines as acting based upon past behavior instead of the present and being stuck in a fixed, solitary perspective, oblivious to alternative multiple viewpoints. Something called mindfulness is currently very fashionable and has been so for some time now in American

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business, education, media, medicine, popular culture, and sports. Many business, legal, and medical organizations are considering how mindfulness can help alleviate stress, improve productivity, reduce mistakes, and resolve conflicts. Many people from Hollywood, Silicon Valley, and Wall Street practice some form of mindfulness. Much of the widespread popularity of mindfulness stems from (popular media coverage about) empirical, experimental research data in psychology and neuroscience about how practicing mindfulness improves emotional, mental, and psychological health by boosting attention, concentration, immune response, and positive affect, while reducing mind wandering, distress, emotional reactivity, and negative affect. Practicing mindfulness is a form of experiential learning that provides a temporal space to pause and reflect upon more thoughtful decisions, including sustaining ethical behavior and leadership. This Article draws upon various novel interdisciplinary and multidisciplinary approaches, ranging from biology, decision theory, financial economics, management science, medicine, neuroscience, psychology, and psychiatry to analyze how practicing mindfulness can improve the decision-making, ethics, and leadership of non-lawyers. To date, there is little empirical or experimental research about how practicing mindfulness affects law students, lawyers, or law professors. There is a large and growing body of empirical or experimental research about how practicing mindfulness affects people who are not in the legal profession. Based on this research, this Article makes three recommendations. First, law professors and lawyers should team up with neuroscientists and psychologists to conduct multi-methods waitlist controlled research studies involving law students, lawyers, and law professors to determine if practicing mindfulness improves legal decision-making, ethics, and leadership. Second, law students, lawyers, and law professors should try practicing mindfulness to see if they improve their legal decision-making, ethics, and leadership. Third, law schools, law firms, and bar associations should try offering voluntary mindfulness training and supporting mindfulness practice to see if doing so improves legal decision-making, ethics, and leadership.
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I. INTRODUCTION: A PRIMER ABOUT MINDFULNESS IN CONFLICT RESOLUTION AND LAW

There is much current interest and popularity, both in the United States and worldwide, about being (more) mindful among many, including (amateur, elite, professional, and Olympic) athletes, businesses (such as Google), clinical law professors, correctional facilities, doctors, entertainment celebrities (such as Katy Perry), K–12 educators, financial

4. CHADE-MENG TAN, SEARCH INSIDE YOURSELF: THE UNEXPECTED PATH TO ACHIEVING SUCCESS, HAPPINESS (AND WORLD PEACE) 55, 60 (2012).
7. See, e.g., Terry Byrne, Prevention Priority: Emphasis on Wellness Grows, MASS. GEN. HOSP.: MASS. GEN. MAG. (June 2, 2016), https://giving.massgeneral.org/disease-prevention-as-priority [https://perma.cc/ZZG3-JPNK] (reporting that “Paul Huang, MD, PhD, a Mass General clinician-researcher, studies the links between diabetes and heart disease and leads the CDPC Cardiac Metabolic Syndrome Program, which launched in 2005” and offers patients a 12-week program called “Learn to be Lean,” that includes meditation, yoga, guided imagery, breathing, and relaxation exercises to help participants learn to manage and reduce stress); RONALD EISENPIET, ATTENDING: MEDICINE, MINDFULNESS, AND HUMANITY 13 (2017); Paul Huang, Learn to be Lean Course Materials, on file with author; SARI SANTORELLI, HEAL THY SELF: LESSONS ON MINDFULNESS IN MEDICINE (1999).
8. See, e.g., Korin Miller, Scientists: This Type of Meditation Can Actually Change Your Brain, GLAMOUR (Feb. 19, 2016, 7:15 AM), http://www.glamour.com/story/meditation-changes-your-brain [https://perma.cc/CFL6-TRYN].
advisors,11 golf players,12 judges,13 law professors,14 law schools,15 law students,16 lawyers,17 legal ethics professors,18


legal writing professors,\textsuperscript{19} laypeople in the public,\textsuperscript{20} legal profession consultants,\textsuperscript{21} managers,\textsuperscript{22} management scholars,\textsuperscript{23} military members,\textsuperscript{24} nurses,\textsuperscript{25} organizations,\textsuperscript{26} organization scholars,\textsuperscript{27} parents,\textsuperscript{28} police departments,\textsuperscript{29} trainers,\textsuperscript{30} psychologists,\textsuperscript{31} psychotherapists,\textsuperscript{32} and tennis players.\textsuperscript{33} Thinking mindfully can benefit decision-making in professional business


\textsuperscript{23} See, e.g., Andrew C. Hafenbrack, Mindfulness Meditation as an On-The-Spot Workplace Intervention, 75 J. BUS. RES., at 118, 118–19, 126 (2017).


\textsuperscript{29} See e.g., Michael S. Christopher et al., A Pilot Study Evaluating the Effectiveness of a Mindfulness-Based Intervention on Cortisol Awakening Response and Health Outcomes Among Law Enforcement Officers, 31 J. POLICE PSYCHOL. 15, 17–18 (2016); David Schimke, Taking Mindfulness to the Streets: Neuroscientists Explore Whether Resilience Training Can Help Cops in Crisis, CHRON. HIGHER EDUC. (Jan. 27, 2017), at B8 (reporting on this research).

\textsuperscript{30} See George Pitagorsky, Mindfulness: A Critical Success Factor, 9 TRAINING INDUSTRY MAG., issue 4, Fall 2016, at 20, 20–23.

\textsuperscript{31} See generally, Elisha Goldstein, Uncovering Happiness: Overcoming Depression with Mindfulness and Self-Compassion (2015).


Research indicates that mindfulness also cultivates emotional capacity and self-esteem. From psychology and neuroscience research studies finding that mindfulness produces many benefits, mindfulness improves attention and sensorimotor control, cognitive abilities, emotional regulation, focus and productivity, inner peace, life satisfaction, psychological health, self-esteem, self-perception, sleep quality, well-being, working memory capacity, and reading comprehension scores on the GRE. Research indicates that mindfulness also cultivates emotional.


40. See Xinghua Liu et al., Can Inner Peace be Improved by Mindfulness Training: A Randomized Controlled Trial, 31 STRESS & HEALTH 245, 249 (2013).

41. See Feng Kong et al., Dispositional Mindfulness and Life Satisfaction: The Role of Core Self-Evaluations, 56 PERSONALITY & INDIVIDUAL DIFFERENCES 165, 168 (2014).


44. Erika N. Carlson, Overcoming the Barriers to Self-Knowledge: Mindfulness as a Path to Seeing Yourself as You Really Are, 8 PERSP. PSYCHOL. SCI. 173, 176 (2013).

45. See, e.g., David S. Black et al., Mindfulness Meditation and Improvement in Sleep Quality and Daytime Impairment Among Older Adults with Sleep Disturbances: A Randomized Clinical Trial, 175 J. AM. MED. ASS’N.: INTERNAL MED. 494, 498–99 (2015).


intelligence,48 reduces aggressive behavior,49 reduces anxiety and stress,50 reduces a biomarker of systemic inflammatory disease risk,51 reduces loneliness and pro-inflammatory gene expression in older adults,52 slows cellular aging,53 and treats mental disorders54 and insomnia.55 So, just what is this fantastic, wonderful, amazing thing called mindfulness and how does it work?56 Practicing mindfulness is just simply “a way of being—a capacity for moment-by-moment awareness—which doesn’t belong to any one culture or tradition”57 and “means becoming more aware of what’s going on—right here, right now.”58 Mindfulness can be practiced in such forms of physical movement as qigong,59 tai chi,60 and


51. J. David Creswell et al., Alterations in Resting-State Functional Connectivity Link Mindfulness Meditation with Reduced Interleukin-6: A Randomized Controlled Trial, 80 BIOLOGICAL PSYCHIATRY 53, 59 (2016).

52. J. David Creswell et al., Mindfulness-Based Stress Reduction Training Reduces Loneliness and Pro-Inflammatory Gene Expression in Older Adults: A Small Randomized Controlled Trial, 26 BRAIN, BEHAV. & IMMUNITY 1095, 1099 (2012).


55. See, e.g., Jason Ong & David Scholtes, A Mindfulness-Based Approach to the Treatment of Insomnia, 66 J. CLINICAL PSYCHOL. 1175, 1183 (2010).


58. Id.


yoga. Everyday simple acts can become forms of mindfulness practice and meditation, including eating and showering.

Mindfulness, although related to meditation, differs from meditation. Mindfulness meditation is a way to practice mindfulness. There are other forms of meditation, such as transcendental meditation. We can be organically mindful or we can be mindful as the deliberate result of practicing meditation. Dispositional mindfulness, which is also known as trait mindfulness, although related to, differs from, deliberate, or intentional, mindfulness meditation. Additionally, both the state and trait of mindfulness, although related to, differ from practicing mindfulness as an on-the-spot intervention. Finally, mindfulness meditation can entail physical awareness, which directs attention to such physical sensations as your breath and bodily sensations, or intrapsychic awareness, which directs attention to such internal phenomena as your feelings and thoughts.

The best way to have a sense of what mindfulness, which is derived from Eastern philosophical and religious traditions, entails is to directly experience and feel mindfulness firsthand. This can be accomplished by listening to these three-minute guided meditations: the Body Scan Meditation and the Body and Sound Meditation are part of a free collection of guided meditations that the UCLA Mindfulness Awareness Research Center has made available.

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61. See generally, HALLIE NEUMAN LOVE & NATHALIE MARTIN, YOGA FOR LAWYERS: MIND-BODY TECHNIQUES TO FEEL BETTER ALL THE TIME (2014).
64. See, e.g., David Gelles, How to Be Mindful While Taking a Shower, N.Y. TIMES (May 10, 2017), https://nyti.ms/2pwXxhm.
66. See generally Yi-Yuan Tang et al., Traits and States in Mindfulness Meditation, 17 NATURE REV. NEUROSCI. 59 (2015).
68. Id. at 119–20.
Center provides on its website. Another brief guided mindfulness practice is called 3 Minute Breathing Space, which is part of a free collection of guided mindfulness practices that the University of Missouri Mindfulness Practice Center, which offers students, faculty and staff “a non-sectarian approach to mindfulness that draws on contemplative practices from a variety of traditions,” provides on its website. This guided mindfulness practice asks you to notice your “thoughts as mental events passing across the sky of the mind,” notice “what feelings are present: are you feeling happy or sad, maybe you are feeling content or restless,” and “then noticing what sensations are present in the body, is there tension, relaxation, is there a sense of ease or is there a sense of discomfort?” This guided mindfulness practice also suggests “using the breath as an anchor to bring you into the present.”

My personal introduction to practicing mindfulness was from observing as a kid my grandma’s daily Buddhist meditative mindfulness, utilizing a set of mala beads. The Chinese character for mindfulness is “nian,” itself made up of two characters, with a top character meaning now and bottom character meaning heart and mind. Thus, the composite character means experiencing and engaging the present moment-by-moment fully with all of your heart and mind. My grandma taught me to slow down, be thoughtful of how my choices impact others, and become more clam and at peace with life through practicing mindfulness. Her example of being serene in the face of challenges remains a source of perennial inspiration.

75. Mindfulness Homepage, UNIV. OF MO. SYS., https://www.umsystem.edu/totalrewards/wellness/mindfulness/mindfulness_index [https://perma.cc/3YMQ-9NV7].
76. Guided Mindfulness Practices, supra note 74.
77. Id.
78. Id.
79. Id.
82. See, e.g., Karl Duffy, Bring Your Heart to Each Moment Today, MINDFUL BALANCE (May 13, 2011), https://mindfulbalance.org/2011/05/13/being-mindful-today/ [https://perma.cc/E2K8-7RAN].
She was born in 1898 and immigrated to America to help raise me. She passed in 2003 and continues to live on in my heart and mind through memories of her teachings and lessons about mindfulness.

The introduction of this Article provides a very brief primer about mindfulness in conflict resolution and law. Another introduction to mindfulness in conflict resolution and law is the podcast of an American Bar Association program titled, *Mindfulness: A Pathway to Success, Happiness, and Conflict Resolution.* Yet another introduction to mindfulness in legal education analyzes mindfulness, how mindfulness can help law students engage in positive personal and professional transformation, and explains how mindfulness offers new hope for creating and sustaining thriving legal practices.

A final introduction to how practicing mindfulness improves lawyer well-being is a section of a report by the National Task Force on Lawyer Well-Being. I also recently wrote a very candid and personal memoir discussing my experiences in higher education as student and professor, openly sharing how practicing mindfulness helped to reduce fears, rumination, and worry in facing adversity, disappointment, and setbacks. I and many people I know struggled with anxiety, depression, and chronic stress in law school and law practice. It is natural that all of us will feel down, lost, and overwhelmed at various points in our personal and professional lives. Law students and lawyers often are overly critical of others and themselves. Practicing mindfulness provides a helpful sense of perspective, compassion, and self-compassion.

An introduction to mindfulness designed for law students and young lawyers is a webinar presentation by Cory Muscara, an attorney who also holds a master’s degree in applied positive

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86. See Peter H. Huang, *Adventures in Higher Education, Happiness, and Mindfulness,* 7(2) BRIT. J. AM. LEGAL STUD. (forthcoming 2018); Univ. of Colo. Law Sch., *Professor Huang’s Workshop Targets Stress, Anxiety in Legal Field,* http://www.colorado.edu/law/2017/06/05/professor-huangs-workshop-targets-stress-anxiety-legal-field
psychology, about how to manage stress and shift from just surviving to flourishing and thriving. The National Task Force on Lawyer Well-being recently issued a report about lawyer well-being, which includes a section about mindfulness meditation. A recent PBS documentary provides an introduction to mindfulness and features the singer Jewel, Jon Kabat-Zinn, ABC reporter Dan Harris, and several of the leading figures in psychology and neuroscience researchers about mindfulness. Principal Analyst at DecisionSet in Palo Alto, California, Randall Kiser’s one-of-a-kind, multi-disciplinary, practice-based book introduces law students to these important so-called soft skills: self-awareness, self-development, social proficiency, wisdom, leadership, and professionalism. Practicing mindfulness helps to foster and sustain all of these soft skills.

People often do not want to be where and when they presently are, as evidenced by ubiquitous car bumper stickers that begin with the phrase “I’d rather be” and conclude with some verb such as “biking, gaming, quilting, skiing, texting” or anything besides a phrase that effectively states “driving this car that I’m presently driving” or, more succinctly, just “here now.” A desire to be somewhere and sometime else is the antithesis of mindfulness and the source of much anxiety, regret, and human suffering. Often, we are not mindful of the present because we are ruminating over what already happened in the past or worrying about what might happen in the future. Popular culture in the form of movies, songs, and television shows often remind us of the importance of staying in the present. We all can benefit from Queen Elsa’s advice to herself in the song Let It Go from the film Frozen in its original version: “I’m never going back. The past is in the past. Let it go. Let it go.” Or the more simplified pop version of the song: “Standing frozen in the life I’ve chosen, you won’t find me. The past is so behind me buried in the snow. Let it go. Let it go.”

We also can benefit from the advice in a hypothetical

87. AM. BAR ASS’N NATIONAL TASK FORCE ON LAWYER WELL-BEING, supra note 85.
88. Mindfulness Goes Mainstream (PBS broadcast Aug. 2017), http://pressroom.pbs.org/Programs/m/MINDFULNESS-GOES-MAINSTREAM.
89. Kiser, supra note 21.
90. Frozen, Let It Go (Idina Menzel Theatrical Recording) (Walt Disney 2013) (available at https://www.youtube.com/watch?v=L0MK7qz13bU).
commencement speech by columnist Mary Schmich that Mark Anthony “Baz” Luhrman made famous in a spoken word song: “Don’t worry about the future, or know that worrying is as effective as trying to solve an algebra equation by chewing bubblegum.”

There is a recurring joke in the movie Bridge of Spies that whenever the lawyer James Donovan (played by Tom Hanks, who won the 2016 Academy Awards for Best Supporting Actor for this role) if Abel is worried, Abel replies: “Would it help?” Engaging in worry is not directly helpful, usually stressful, and can even interfere with decision-making processes. However, worrying may indirectly help a person if worrying motivates that person to proactively undertake actions to avoid whatever that person is worried about from coming to fruition. Any proactive actions taken are potential benefits from the motivational, underlying stressful act of worrying.

A. Two Definitions of Mindfulness

In common parlance, the word “mindfulness” has been defined as “the quality or state of being conscious or aware of something.” A straightforward and pragmatic definition of mindfulness is as “the ability to know what’s happening in your head at any given moment without getting carried away by it.” At least two more technical notions of mindfulness exist in conflict resolution and law. The first and more familiar concept of mindfulness within the field of conflict resolution and the law has Eastern metaphysical and philosophical roots and is often associated with Buddhist and other spiritual and religious traditions. The

95. Bridge of Spies (Amblin Entertainment 2015).
97. Angie Han, 'Bridge of Spies' Reduces a Murky Gray World to Black and White, http://www.slashfilm.com/bridge-of-spies-review/ (Oct. 5, 2015), (reviewing the movie and noting the running joke within the film) [https://perma.cc/7PFJ-8X4B].
101. Jon Kabat-Zinn, COMING TO OUR SENSES: HEALING OURSELVES AND THE WORLD
second and less familiar concept of mindfulness within the field of conflict resolution and the law is quite familiar in the field of psychology and is due to well-known Harvard University social psychologist Ellen Langer.102

Law professor Leonard Riskin and attorney mediator Rachel Wohl define the Eastern-derived notion of mindfulness that they teach as being aware, conscious, or mindful “in a particular way—deliberately, moment to moment, and without judgment or attachment to whatever passes through the five senses or the mind. Mindfulness, as we generally use the term, means paying attention, with equanimity, to our present experience as it unfolds.”103 As they note, their definition of mindfulness is an elaboration of a definition by Jon Kabat-Zinn.104 Clinical psychologist Shauna Shapiro states this about the first notion of mindfulness:

It is important to remember that mindfulness is both an outcome (mindful awareness) and a process (mindful practice): (1) Mindful awareness: an abiding presence or awareness, a deep knowing that manifests as freedom of mind (e.g., freedom from reflexive conditioning and delusion), and (2) Mindful practice: the systematic practice of intentionally attending in an open, caring, and discerning way, which involves both knowing and shaping the mind.

A definition that captures both aspects of mindfulness is as follows: The awareness that arises through intentionally attending in an open, accepting, and discerning way to whatever is arising in the present moment.105

Psychologist Ellen Langer states this about her notion of mindfulness: “[w]hen we are mindful, we implicitly or explicitly (1) view a situation from several perspectives, (2) see information presented in the situation as novel, (3) attend to context in which we are perceiving the information, and eventually (4) create new categories through which information may be understood.”106 It should be clear to law professors that such a definition of mindfulness is closely related to what good lawyering entails and captures what many law professors often have in mind when they

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104. Id. at 131 n.26. See KABAT-ZINN, supra note 101, at 107.
state that law professors teach the capabilities of thinking like a lawyer, including the skill of being able to “identify legal issues in unfamiliar or new scenarios.”107 Langer’s research analyzes how mindfulness relates to charisma, focus, innovation, leadership, management, and self-acceptance.108

B. Mindfulness in Conflict Resolution and Negotiations

Riskin and Wohl analyze how Eastern-derived mindfulness and Langer’s mindfulness both can help lawyers and law students more effectively negotiate and resolve conflicts by reducing attention to self-centered concerns; reducing the strength of negative emotions; developing awareness of and freedom from emotions, thoughts, habitual perceptions and behaviors; fostering sensitivity of others’ emotions; and increasing concentration and enhancing social skills.109 Riskin and Wohl co-developed three tools of awareness to implement mindfulness that are summarized by these mnemonics: STOP, STOPSi, and taking STOCK,110 and collectively by this mnemonic: SSITS.111 All three tools are based upon a common foundation, known as the Triangle of Awareness, namely what Riskin and Wohl call “BETs,” which stands for Bodily sensations, Emotions, and Thoughts.112 BETs are what we can be aware of when practicing mindfulness and in so doing choose to have our behavior respond mindfully instead of react mindlessly.113

The first of the three tools that Riskin and Wohl developed to help people establish and maintain mindfulness in the heat of conflict is the STOP tool: Stop; Take a breath; Observe as a compassionate witness your BETs; and Proceed by continuing what you were doing or doing something else.114 The second tool is STOPSi, which is STOP plus the step of Setting Intentions, where an intention concerns how you would like to be during this activity or time.115 So an intention is not a substantive goal of the conflict resolution. Instead, an intention is a goal about your moment-to-moment experience and behavior. Examples of intentions are

109. Riskin & Wohl, supra note 103 at 140, fig.1.
110. Id. at 141.
111. Id. at 124 (citation omitted).
112. Id. at 141–42, fig.2.
113. Id. at 143, fig.3.
114. Id. at 144–46, fig.4.
115. Id. at 146–48, fig.5.
being attentive, balanced, calm, caring, courageous, kind, mindful, polite, or even ruthless.\textsuperscript{116} The third tool is taking STOCK: Before the activity, set an intention by utilizing STOPSi; and then during the activity, Stop; Take a breath; Observe BETs; and Consider whether you have been following your intention and whether you would like to change it; and keep going after you make possible adjustments.\textsuperscript{117}

Once upon a time, one of my nieces, K, and her brother, S, were arguing during a car ride. Their aunt said to them you should learn about something called conflict resolution that helps people to resolve their conflicts. K immediately volunteered that she had already learned recently in her elementary school all about conflict resolution. We were very curious about what K had learned and so we asked her to explain to us what exactly is conflict resolution. K said that conflict resolution is best explained by this example. Suppose that person 1 wants the outcome to be something that we will call A. Suppose that person 2 wants the outcome to be something different that we will call B. Then conflict resolution is when person 1 and person 2 both end up with the outcome being a third something that we will call C that differs from both A and B. Part of how mindfulness helps conflict resolution is to allow participants to pay attention to reality as it unfolds moment-by-moment instead of just focusing their attention on their desired outcomes.

Part of successful lawyering, negotiating, and living involves the art of effective communication\textsuperscript{118} and positive communication,\textsuperscript{119} both of which entail practicing mindfulness. Psychologist Mihaly Csikszentmihalyi, who is well-known for the concept of flow, which is a mental state of complete absorption that nothing else matters (“being in a zone” or “being in a groove”), stated in his seminal book, \textit{Flow: The Psychology of Optimal Experience}, his belief that “[t]he main function of conversation is not to get things accomplished, but to improve the quality of experience.”\textsuperscript{120}

The rest of this Article consists of three sections that analyze

\textsuperscript{116} Id. at 147–48, 150.

\textsuperscript{117} Id. at 148–52, figs.6 \&7 (explaining in detail a basic and an advanced version of this mindfulness tool); Katherine Larkin-Wong, \textit{A Newbie’s Impression: One Student’s Mindfulness Lessons}, 61 J. LEGAL EDUC. 665, 667 (2012) (describing from a law student’s perspective the taking STOCK tool).


\textsuperscript{119} \textit{JULIEN C. MIRIVEL, THE ART OF POSITIVE COMMUNICATION} (2014).

how practicing mindfulness can improve, respectively, decision-making, ethics, and leadership in general and therefore also suggest a set of possible theories about how and why practicing mindfulness can improve decision-making, ethics, and leadership in particular for law students, lawyers, and law professors.

II. CAN PRACTICING MINDFULNESS IMPROVE DECISION-MAKING?

Emerging research in the field of human Judgment and Decision Making (JDM) studies the dynamic nature of JDM and how people can learn to improve their JDM. For example, research studies find evidence that playing video games can increase cognitive flexibility, improve probabilistic inference, and improve children’s problem-solving ability. Additionally, playing serious games designed to mitigate cognitive biases can improve decision-making.

This part of the Article analyzes how practicing mindfulness can improve people’s decision-making processes through a number of routes, including: (1) reducing anxiety, negative affect, stress, and threat perception, (2) increasing positive affect, (3) improving cognitive functioning, (4) reducing fatigue, (5) improving self-knowledge, (6) improving decision framing, (7) improving information gathering, (8) improving information processing, (9) improving the drawing of conclusions, (10) improving learning from feedback, (11) improving decision readiness, (12) increasing single-tasking, (13) decreasing attempted multi-tasking, (14) reducing substance abuse, (15) improving sleep quality,

123. C. Shawn Green, Alexandre Pouget, & Daphne Bavelier, Improved Probabilistic Inference as a General Learning Mechanism with Action Video Games, 20 CURRENT BIOLOGY 1573, 1573 (2010).
(16) improving discernment about what choices are most important, (17) reducing the influence of cognitive biases, (18) reducing the influence of affective biases, and (19) reducing burnout.

Based on existing research about practicing mindfulness, many organizations currently offer or are considering offering voluntary mindfulness training to their leaders and employees. Practicing mindfulness appears to ameliorate many challenges organizations face about multi-tasking, attention overload, and incessantly more stressors due to a workplace culture of 24/7 accessibility and the plethora of ever more complicated workplace arrangements. The popularity of mindfulness among those in Silicon Valley and on Wall Street raises concerns about whether rich and powerful Americans have privileged access to mindfulness from their employers. Research about practicing mindfulness at work is in an embryonic stage. There are many crucial unanswered questions about how mindfulness is being practiced, marketed, and utilized in American workplaces today. Professors Jochen Reb, Tammy Allen, and Timothy Vogus raise a number of unresolved questions as guest editors of a special issue titled “Mindfulness at Work: Pushing Theoretical and Empirical Boundaries” of the journal Organizational Behavior and Human Decision Processes in their call for article submissions.126 Because much of the research about mindfulness occurs in clinical settings, how much of this research applies to workplace contexts is unclear. What significant differences and implications, if any, are there about mindfulness in clinical environments versus mindfulness at work? Is there contagion of mindfulness across domains, individuals, and organizations? Can empirical research connect or combine the perspectives about mindfulness attributed to Jon Kabat-Zinn with those attributed to Ellen Langer? Do increased levels of individual mindfulness aggregate to collective mindfulness? What are the cognitive and emotional regulation mechanisms by which mindfulness impacts collective and individual outcomes? How do measures of mindfulness at work relate to ratings by others about mindfulness? Because studies about collective mindfulness most frequently occur in high-reliability organizations, such as nuclear power plant control rooms, or reliability-seeking organizations, such as hospital intensive care units, prioritizing safety, does collective mindfulness affect other variables of interest, such as productivity? And does it affect more routine settings, such as

126. E-mail from Jochen Reb, Associate Professor of Organisational Behaviour & Human Resources, Singapore Management University, to author (Apr. 18, 2017) (on file with author).
everyday service work? Do similar practices and processes stimulate collective mindfulness in such environments? Which, if
any, cultural variables are important for the practice and outcomes of mindfulness at workplaces? In workplaces, do factors besides meditation, such as workplace design and layout, correlate with higher mindfulness? How can organizations foster mindfulness by individuals, teams, and organizations? What are some of best practices for mindfulness training in organizations regarding delivery mechanisms, dosage, and timing? Who benefits from workplace mindfulness training and who does not? What outcomes can result from workplace mindfulness training and what outcomes cannot or do not? Who is attracted to workplace mindfulness training programs and who is not?

An ever-increasing number of law professors, law firms, and legal organizations provide some type of voluntary mindfulness training. Northwestern University law professor Leonard Riskin127 teaches Conflict Management in Legal Practice.128 Riskin and Rachel Wohl also teach as part of the annual professional skills program at Pepperdine Law School’s Straus Institute for Dispute Resolution a two-day course Practical Mindfulness: Calm and Clear in the Heat of Conflict.129 Professor Charles Halpern, author of a book exploring how meditation can foster inner wisdom and cultivate mindful social activism, Making Waves and Riding the Currents: Activism and the Practice of Wisdom,130 is the inaugural director of the Berkeley Initiative for Mindfulness in Law and teaches Effective and Sustainable Law Practice: The Meditative Perspective.131 Professor Rebecca Ann Simon,132 co-creator and inaugural executive director of the national Mindfulness In Law Society,133 co-creator and inaugural

132. Rebecca Ann Simon Faculty Page, Sw. Law Sch., http://www.swlaw.edu/faculty/full-time/rebecca-simon [https://perma.cc/6Q8L-YN8J].
133. Id.
co-director of the Mindfulness, Stress Management, and Peak Performance Program at Southwestern Law School, leads classes about mindfulness for law school and bar exam success. University of San Francisco law professor Rhonda Magee,134 a fellow and member of the Steering Committee of the Mind and Life Institute, teaches a course titled Contemplative and Mindful Law and Law Practice. University of Miami law professors Jan L. Jacobowitz,135 director of the professional responsibility and ethics program, and Scott L. Rogers,136 director of the mindfulness and law program, co-teach Mindful Ethics: Professional Responsibility for Lawyers in the Digital Age.137 Rogers also teaches Mindfulness in Law: Cultivating Tools for Effective Practice.138 Rogers analyzes how the University of Miami law school creatively infused mindfulness throughout its law school community and integrated mindfulness into the curriculum.139 University of Miami law professor William Blatt140 teaches a course titled Emotional Intelligence.141 Brooklyn University director of legal writing and law professor Heidi K. Brown has written three books about mindful legal writing.142 University of Missouri law Professor Richard C. Reuben, who founded the Mindfulness Affinity Group of the Association of American Law School’s Section on Balance in Legal Education and co-founded the Mindfulness in Law Society, teaches Conflict and Conflict Management and Emotional Intelligence for Lawyers.143

Some judges also talk about awareness, anxiety and

134. Rhonda Magee Faculty Page, UNIV. OF SAN FRANCISCO SCH. OF LAW, https://www.usfca.edu/law/faculty/rhonda-magee [https://perma.cc/C46V-D5GQ].
136. Scott L. Rogers Faculty Page, UNIV. OF MIAMI SCH. OF LAW, http://www.law.miami.edu/faculty/scott-l-rogers [https://perma.cc/AM2-B266].
140. William Blatt Faculty Page, UNIV. OF MIAMI SCH. OF LAW, http://www.law.miami.edu/faculty/william-s-blatt [https://perma.cc/7L5B-8A5].
mindfulness. For example, federal judge Michael A. Ponsor advised: “Keep tabs on your body. . . . If you are nervous, just be nervous. Do not make it worse by getting upset about it.” Judge Supreme Court Justice Stephen Breyer stated he pauses for ten to fifteen minutes twice daily:

I don't know that what I do is meditation, or even whether it has a name. For 10 or 15 minutes, twice a day I sit peacefully. I relax and think about nothing or as little as possible. And that is what I've done for a couple of years.

And really I started because it’s good for my health. My wife said this would be good for your blood pressure and she was right. It really works. I read once that the practice of law is like attempting to drink water from a fire hose. And if you are under stress, meditation—or whatever you choose to call it—helps. Very often I find myself in circumstances that may be considered stressful, say in oral arguments where I have to concentrate very hard for extended periods. If I come back at lunchtime, I sit for 15 minutes and perhaps another 15 minutes later. Doing this makes me feel more peaceful, focused and better able to do my work.

Chair of the American Bar Association’s Commission on Lawyer Assistance Programs, Terry Harrell, observed how “the benefits of mindfulness have become a big topic of discussion and education among professional responsibility groups” because “mindfulness practice makes us better decision-makers, better ethical decision-makers. And that translates into better lawyering,” while “[s]tressed-out lawyers make poor decisions, leaving them open to liability.” Acting director of the State Bar of California’s Lawyer Assistance Program, Richard Carlton, observed that a “mindfulness practice can be as simple as closing your eyes and counting backward from 100.” A white paper of the American Judges Association advocated that judges practice mindfulness to make better decisions.

147. Id.
148. Id.
149. Id.
150. Pamela Casey et al., Minding the Court: Enhancing the Decision-Making Process,
A. Cognitive Economics, Mindful Lawyering, and Robot Attorneys

Economist Miles Kimball defines cognitive economics as “the economics of what is in people’s minds.” Kimball observes that cognitive economics “is a vibrant area of research” and that “a key theme of cognitive economics is finite cognition (often misleadingly called ’bounded rationality”).” Kimball explains that “[finite cognition “means something more than just imperfect information: it means finite intelligence, imperfect information processing, and decision-making that is costly.” Kimball notes “the claim that human intelligence is finite and that finite intelligence matters for economic life (scarce cognition) is not really controversial.” Kimball explains that people hire and pay lawyers due to finite cognition:

As for lawyers, even if one considers talking in a courtroom a special skill that is not just a matter of intelligence, people pay a lot of money to lawyers who merely read law books and extract the relevant information. If everyone had infinite intelligence, it would be easy to understand the law books on one’s own, and paying someone else to do it would only make sense if one’s wage rate was higher than the lawyer’s wage rate, or if one was a slow reader for physiological reasons. If everyone had infinite intelligence, even finite reading speeds would not give trained lawyers enough of an edge for them to charge the fees they do.

Certainly, law schools educate law students about how to read and extract legal information from judicial opinions, regulations, and statutes. Good legal education, though, involves more than just simply a transfer of knowledge or information about case law, regulations, and statutes. Law professors teach law students “how to think like lawyers,” a skill that includes particular habits of thought, because practicing law is partly a cognitive profession. Practicing law is also an affective profession in the sense that emotional intelligence is an important part of being a successful attorney.

Law students and lawyers who learn to mindfully

152. Id. at 167.
153. Id. at 167, 172.
154. Id. at 172.
155. Id. at 173.
156. Id.
think and feel can also choose wisely. Lawyers have to make decisions all day. The reason that people hire and pay lawyers is that lawyers have the legal expertise to advise their clients to make wise decisions in conflict resolution, deal making, litigation, mediation, and negotiation.

The specter of automated robot lawyers with artificial intelligence displacing and replacing human attorneys is a scenario that is being seriously discussed and contemplated today by many lawyers and consultants to law firms. Advancements in computing technology are inherently unpredictable in their pace, scope, and nature. Machines increasingly perform cheaply, quickly, and more efficiently many tasks previously requiring expensive, slow, and fallible human labor. It might seem obvious that lawyers are currently an endangered profession and will in the not too distant future inevitably become obsolete. Cognitive scientists Philip Fernbach and Steven Sloman cogently point out how machines as of now do not share intentionality with people. Fernbach and Sloman explain that humans possess the skills to form intentions, reflect, observe and evaluate their own thoughts, engage in self-control, and modify actions based upon our abilities for self-awareness, which contrasts with machines that must always follow their programming. Practicing mindfulness improves our abilities for self-awareness and in so doing also improves our skills to form intentions, reflect, observe and evaluate our thoughts, engage in self-control, and modify actions if necessary. Attorneys who practice mindfulness differentiate themselves from, and so are less likely to be replaced by, artificially intelligent machine lawyers.

B. Mindfulness About Decision-Making Processes

Because mindfulness and the decision sciences “both focus on attention to thought processes and the exploration of the roots of these cognitions” it should not be surprising that practicing mindfulness is related to improving decision-making processes. In

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160. Id. at 145–46.

particular, many studies find that people’s mood states can affect their decision-making, “with negative affect and anxiety increasing a person’s tendency toward decision making biases.”

Mindfulness practice entails viewing from an accepting and open perspective one’s thoughts, feelings, and bodily sensations. In so doing, mindfulness has been linked to positive affect and helps to reduce negative affect and anxiety. Therefore, one route by which mindfulness can improve people’s decision-making is by improving people’s moods and reducing their anxiety. Learning to become more mindful is a valuable skill that cultivates better mood regulation and self-acceptance.

A way that mindfulness meditation can improve decision-making is by allowing people to practice and get better at being mindful, which in turn can improve decision-making for all the reasons above. Another way that mindfulness meditation can improve decision-making is if mindfulness meditation reduces anxiety and stress. This is because there is evidence that “anxiety increases threat perception, which, in turn, results in self-interested unethical behaviors.” There is also empirical evidence that just four days of mindfulness meditation training for twenty minutes per day can improve the ability to sustain attention, executive functioning, working memory, and visual-spatial processing of undergraduates, perhaps as a consequence of reducing self-reported anxiety and fatigue. Another experiment involving subjects with no meditation experience found that a three-day (one-hour total) mindfulness meditation intervention reduced subjects’ anxiety, confusion, depression, fatigue, heart rate, negative mood, and tension compared to a control group and also a sham mindfulness group.

People have a tendency for making flawed self-assessments

162. Id.
163. Id.
164. Id.
169. Id. at 599, 601, 603.
regarding their skills and character, with deleterious impacts on their health, education, and wealth. Practicing mindfulness can improve self-knowledge about personality, emotions, thoughts, and behavior. It appears that mindfulness directly addresses the pair of key barriers to self-knowledge, namely informational barriers, in terms of the quality and quantity of information people have regarding themselves, and motivational barriers, in terms of processing of information people have of themselves motivated by protecting their egos. Improved self-knowledge should in turn improve decision-making.

C. Mindfulness Throughout Decision-Making Stages

Decision sciences professor Natalia Karelaia and organizational behavior and human resources professor Jochen Reb recently explore how and when mindfulness can improve people’s decision-making. They divide up the process of decision-making into these stages: (1) Decision Framing, (2) Information Gathering and Processing, (3) Making Conclusions, and (4) Learning from Feedback.

In the first stage of decision-making—decision framing—mindfulness helps people realize there is an opportunity to make a decision in the first place, as opposed to behaving according to some pre-established script, simply reacting out of habit, or proceeding with the status quo. Being mindful can mitigate premature, narrow framing of the decision problem. Having an open and curious beginner’s mind can lead people to initially consider more possible options. Rather than passively choosing between just some option that happens to be presented and the status quo, mindfulness facilitates the proactive generation of multiple possible options to achieve one’s authentic goals. Instead of choice being driven merely by whatever options happen to be

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174. Id. at 176–77.


176. Id. at 165 fig.7.1.

177. Id. at 166–67.

178. Id. at 167–68.
available, mindfulness fosters clarity about one’s underlying values that assists in creating and considering novel options and so those values driving choices.\textsuperscript{179} People who practice mindfulness are more inclined to perceive more choice and sense greater freedom and self-determination.\textsuperscript{180} People who are mindful about their core values and fundamental goals react less to temporary, situational cues.\textsuperscript{181}

In the second stage of decision-making—information gathering and processing—mindfulness can affect both the quantity and quality of information that people collect and process.\textsuperscript{182} Mindfulness likely increases the quality of information utilized to make choices because the open-minded awareness and observation that mindfulness entails implies that mindful people will process information in a neutral, unbiased fashion as opposed to filtering information through lenses that are biased by past experiences, cognitive biases, and motivational biases. Mindfulness also reduces negativity bias, which is the tendency to weigh negative information more heavily than positive information.\textsuperscript{183} Karelaia and Reb hypothesize that mindfulness reduces confirmation seeking and overconfidence by making people less attached to their thoughts, feelings, and self-images.\textsuperscript{184} Another way that mindfulness may increase the quality of information utilized in making choices is by letting people discern relevant from irrelevant information. A final way that mindfulness may increase the quality of information utilized in making choices is by making it more likely that people realize important information is missing and then proactively search for such information.\textsuperscript{185}

In the third stage of decision-making—making conclusions—mindfulness can help people reconcile analysis and intuition by helping people be more aware of when their intuition leads to a choice different from their analysis and evaluating if their

\textsuperscript{179} Ralph L. Keeney, Value-Focused Thinking: A Path to Creative Decision Making (1992).


\textsuperscript{182} Karelaia & Reb, supra note 175, at 172.


\textsuperscript{184} Karelaia & Reb, supra note 175, at 173–74.

\textsuperscript{185} Id. at 174.
intuition should be followed. Because a part of mindfulness is emotional self-awareness, the ability to recognize emotions and view them as information helps people make choices that involve making emotionally difficult trade-offs. Emotional intelligence is effectively knowledge and mindfulness about one’s and others’ emotions. Mindfulness also helps people regulate emotions that arise from conflicts due to making trade-offs. Finally, at this stage of the decision-making process, mindfulness can help people implement their choices by translating their intentions into actions by increasing their perceived behavioral control, strengthening their abilities to control their cognition and emotions that are counter to their intentions, reducing the rigidity of their behavior, and heightening their attention and awareness to inner feelings, internal experiences, and situational cues.

In the final stage of decision-making—learning from feedback—mindfulness can help people recognize when their decision-making environment is not conducive to learning. Karelaia and Reb propose that people who are mindful should be more open to positive and negative feedback and proactively seek feedback because their egos will be less threatened by negative feedback and they should view all facts as being “friendly” information. Karelaia and Reb also believe that people who are mindful should process feedback in an unbiased manner because mindfulness should promote humbleness and reduce cognitive defensiveness, particularly self-serving attribution biases, and overconfidence. Karelaia and Reb hypothesize that “mindful decision makers are more likely to learn from feedback and, importantly, learn the right lessons.”

A final example of how mindfulness may improve decision-

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186. Id. at 176–77.
187. Id. at 177–78; Mary Frances Luce, Choosing to Avoid: Coping with Negatively Emotion-Laden Consumer Decisions, 24 J. CONSUMER RES. 409 (1998); Mary Frances Luce et al., Choice Processing in Emotionally Difficult Decisions, 23 J. CONSUMER EXPERIMENTAL PSYCHOL.: LEARNING, MEMORY, & COGNITION, 384, 388 (1997).
189. Karelaia & Reb, supra note 175, at 178.
190. Id. at 178–79; Nikos L. D. Chatzisarantis & Martin S. Hagger, Mindfulness and the Intention-Behavior Relationship within the Theory of Planned Behavior, 33 PERSONALITY & SOC. PSYCHOL. BULL. 663, 666 (2007) (demonstrating this in the context of leisure-time physical activity).
191. Karelaia & Reb, supra note 175, at 179.
192. Id. at 180.
193. Id. at 180–81.
194. Id. at 182.
making is this algorithm (that can be remembered with the acronym DEAL) to decide between a pair of choices: (1) Define the choices in terms of feelings, images, and words; (2) Explore both sides of each choice in a balanced and complete way; (3) Allow yourself to be open to information that comes from your feelings, images, and words; and (4) Launch yourself into (a) step (1) again to redefine the decision, or (b) realizing the need for additional information, determine how and when to get such information, and getting that information, return to step (1), or (c) stopping the decision process emphasizing equanimity. The website that describes this mindful decision-making technique notes that about half of the people who were taught this process had self-reported making a decision that they judged to be good within a single practice session and that almost everyone who used this method found that it made decision-making more fun and meaningful. It would be interesting to empirically investigate the efficacy of this and other decision-making processes that involve mindfulness.

D. Mindfulness Facilitates Decision Readiness

Decision researchers and business school professors, Jack B. Soll, Katherine L. Milkman, and John W. Payne, coined the phrase decision readiness to refer to “whether an individual is in a position to make a good decision in a particular situation.” They describe a person as being decision-ready when a person’s slow, or system 2 thinking, is ready to monitor a person’s fast or system 1 thinking, suspend wrong judgments, and correct wrong decisions. Soll, Milkman, and Payne emphasize three determinants of decision readiness: (1) fatigue and distraction effects that limit capacity, (2) visceral influences related to one’s physical and emotional state, and (3) individual differences in ability and thinking style. Being mindful addresses each of these aspects of decision readiness because practicing mindfulness should lead people to be aware of fatigue or distraction, be aware of visceral influences upon them, and be more likely to adopt a more reflective thinking style. The problem of being

196. Id.
199. Id. at 13.
distracted while making decisions has become more pervasive in today’s cyber-centric world.\textsuperscript{201}

By practicing mindfulness to utilize both system 1 and system 2 thinking, lawyers can avoid being silly, like a recurring fictional character that comedian Phil Hartman portrayed on the television show Saturday Night Live who was named Keyrock, the unfrozen caveman lawyer.\textsuperscript{202} Keyrock was a caveman who fell into some ice, was preserved well enough so that scientists in 1988 could thaw him out, and he could attend law school.\textsuperscript{203} In one scene, a flight attendant refuses to serve Keyrock any more alcohol.\textsuperscript{204} Outraged, Keyrock drunkenly shouts “Listen, I’ll sue you and your whole crummy airline!”\textsuperscript{205}

My colleague, Nicole Drane, jokes about suggesting to some people that they should “go on a thinking too fast diet” to engage in more single-tasking,\textsuperscript{206} instead of inefficiently serially tasking in an attempt at multi-tasking.\textsuperscript{207} Whether to ban laptops in classrooms depends ultimately on empirical data about whether students, Millennials in particular,\textsuperscript{208} are capable of utilizing digital technology mindfully,\textsuperscript{209} instead of having distracted minds.\textsuperscript{210} Professors can also have a classroom dialogue or discussion with students about whether they should keep smartphones on in classrooms as an exercise in mindful student self-governance.\textsuperscript{211} Learning to pay attention and be engaged is an

\begin{thebibliography}{99}
\bibitem{201} Maggie Jackson, Distracted: The Erosion of Attention and the Coming Dark Age 18–19 (2008).
\bibitem{203} Id.
\bibitem{204} Id.
\bibitem{205} Id.
\bibitem{208} Larry D. Rosen, Rewired: Understanding the iGeneration and the Way They Learn 16 (2010).
\end{thebibliography}
important legal and life skill. Nicole Drane also shared the helpful advice of setting a quota before you start on your daily commute about how many of life’s annoyances must happen during your drive before you snap. For instance, I have decided to set a quota of 100 annoyances per day.

A familiar example of a visceral influence related to an individual’s physical and emotional state is the temporary state of hunger. The deleterious effects of hunger on decision-making are related to a glucose model of self-control and willpower. The well-known fact that hunger causes low decision readiness is the humorous basis for a recent Snickers® advertising campaign consisting of several brief television spots. The first 30-second television commercial, titled “Recovery Room,” opens with a physician, who is dressed in turquoise scrubs, trying to apologize for what he did while sitting next to his patient’s bed in a post-operative recovery room. The surgeon hesitantly says “I’m very sorry.” A female hospital administrator, who is dressed in a grey “power” suit says “[a]nd we’re gonna [sic] get the phone, his phone out of you. . . .” The phone rings with a distinctive tone from inside the patient’s abdomen area. The doc says “I have to . . . I have to take this. Just a little pinch.” The doctor hurriedly says “Sweetheart, I left the phone inside. I’m having phone issues. Bye,” hangs up, and says “Uh, we’re going to fix this. Needless to say,” Siri answers “Ok, resuming play” and starts playing Toni Basil singing this line from her song Mickey, “Oh Mickey, what a pity you don’t understand.” The commercial ends with these words captioned onscreen: “You’re careless when you’re hungry” and with a voiceover saying this line that also is onscreen “Snickers® Satisfies.”

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216. Id.
217. Id.
218. Id.
219. Id.
220. Id.
221. Toni Basil, Mickey, on WORD OF MOUTH (Chrysalis 1981).
A second commercial, titled “the News,”\textsuperscript{223} shows a Midwestern local television station’s Metro news at 6 broadcast with an African-American male anchor, Caucasian male reporter, and Caucasian female meteorologist all incoherently saying what seems like a long string of just Ah’s, eh’s, or A’s. The commercial ends by revealing that an employee is asleep on the job and inadvertently his arm is repeatedly pressing the letter A, causing a long string of A’s to appear on a teleprompter screen.\textsuperscript{224} The commercial ends with these words captioned onscreen: “You’re sleepy when you’re hungry” and with a voiceover saying this line that also is onscreen “Snickers® Satisfies.”\textsuperscript{225}

A third commercial depicts a young Asian male intern during a job interview showing off several drunken social media posts and his calling to follow up on this interview while he is still present in the room.\textsuperscript{226} An off-screen announcer warns viewers about not being ‘dimpatient’ or dim and impatient.\textsuperscript{227} A fourth commercial features a young Caucasian model going through several poses in a chemistry laboratory he confuses with an advanced figure drawing class and ends when he splashes himself with an unknown chemical that he mistakenly believes is a cologne.\textsuperscript{228} An off-screen announcer warns viewers about not being ‘confulish’ or confused and foolish.\textsuperscript{229}

A fifth commercial features a woman catching her daughter coming home at 11 P.M.\textsuperscript{230} The daughter thinks that she will be busted for staying out too late.\textsuperscript{231} Instead, the mother scolds the daughter for not staying out and disappointing her father before cleaning her living room floor with a lawn mower.\textsuperscript{232} An off-screen announcer warns viewers about not being “bloopy,” or having bad judgment and being loopy.\textsuperscript{233}

We all know that we are not ready to make decisions and therefore should not make decisions when we are hungry, sleepy, distracted, angry, excited, jealous, sad, or in any visceral state. Yet, to our detriment, we often and repeatedly do make decisions

\begin{itemize}
\item \textsuperscript{223} Snickers®: The News, MARS, INC. (available at https://www.youtube.com/watch?v=N7xKyR_Z-wk).
\item \textsuperscript{224} Id.
\item \textsuperscript{225} Id.
\item \textsuperscript{226} Id.
\item \textsuperscript{227} Jardine, supra note 214.
\item \textsuperscript{228} Id.
\item \textsuperscript{229} Snickers® Crisper: Figure Drawing, MARS, INC. (available at http://creativity-online.com/work/snickers-crisper—figure-drawing/45018).
\item \textsuperscript{230} Id.
\item \textsuperscript{231} Id.
\item \textsuperscript{232} Id.
\item \textsuperscript{233} Id.
\end{itemize}
when in such altered, temporary states. People are more likely to engage in unethical and unprofessional behavior if they are not decision-ready because of they are under (chronic) stress and other visceral influences. Trial attorney, Nick Badgerow, argued that alcohol, drugs, depression, and gambling compromise the lives of many lawyers and their clients.\textsuperscript{234} People who are depressed or under the influence of alcohol, drugs, or a gambling addiction are not likely to be ready to make decisions or aware of their being decision-impaired. Mindfulness about being in such a temporary, visceral state and facing an important decision can help an individual to become more decision-ready. There is also growing evidence the mindfulness-based interventions can significantly improve sleep quality\textsuperscript{235} and reduce insomnia and sleep disturbances.\textsuperscript{236}

Of course, not all decisions are (equally) important.\textsuperscript{237} Being able to discern which decisions really matter is another benefit of mindfulness. Being mindful can also help people discern the difference between important and necessary versus unimportant and unnecessary decisions.\textsuperscript{238} Such discernment allows people to prioritize the choices they face and spend limited attentional, cognitive, and economic resources on consequential choices instead of wasting effort, time, and energy on micro-managing their lives. Judiciously focusing on choices that matter also lowers anxiety from being overwhelmed by having to make too many choices or choice overload. An example of a common important choice is whether to seek\textsuperscript{239} or avoid information.\textsuperscript{240}

\textbf{E. Mindfulness in Physician Decision-Making}

Being mindful about one’s thinking alerts one to being influenced by cognitive biases.\textsuperscript{241} Professor Pat Croskerry, an

\begin{itemize}
  \item \textsuperscript{234} J. Nick Badgerow, \textit{Apocalypse at Law: The Four Horsemen of the Modern Bar—Drugs, Alcohol, Gambling and Depression}, 18 \textit{PROF. LAW.} issue 3, 2007, at 2.
  \item \textsuperscript{235} See Black, supra note, 45 at 498–99.
  \item \textsuperscript{236} Sheila N. Garland et al., \textit{The Quest for Mindful Sleep: A Critical Synthesis of the Impact of Mindfulness-Based Interventions for Insomnia}, 2 \textit{CURRENT SLEEP MED. REP.} 142, 148 (2016).
  \item \textsuperscript{237} Aner Sela & Jonah Berger, \textit{Decision Quicksand: How Trivial Choices Suck Us In}, 39 \textit{J. CONS. RES.} 360, 361 (2011).
  \item \textsuperscript{238} Karelaia & Reb, supra note 175, at 168–69.
  \item \textsuperscript{239} See, e.g., George Loewenstein, \textit{The Psychology of Curiosity: A Review and Reinterpretation}, 116 \textit{PSYCHOL. BULL.} 75, 75 (1994).
  \item \textsuperscript{240} Russell Golman et al., \textit{Information Avoidance}, 55 \textit{J. ECON. LITERATURE} 96 (2017); Gerd Gigerenzer & Rocio Garcia-Retamero, \textit{Cassandra's Regret: The Psychology of Not Wanting to Know}, 124 \textit{PSYCHOL. REV.} 179 (2017).
  \item \textsuperscript{241} Pat Croskerry, \textit{From Mindless to Mindful Practice—Cognitive Bias and Clinical Decision Making}, 368 \textit{NEW ENG. J. MED.}, 2445, 2447 (2013).
\end{itemize}
expert in emergency medicine safety, explains how cognitive biases cause diagnostic errors and incorrect treatment plans in clinical decision-making. \(^{242}\) Croskerry explains how some cognitive dispositions to respond (CDRs) to patients and some affective dispositions to respond (ADRs) to patients can lead to diagnostic failures. \(^{243}\) Croskerry classifies the action that results from CDRs into a trichotomy of possibilities: flesh and blood decision-making that involves less than ideal thinking on one’s feet and relies on intuition; a Casablanca strategy that “rounds up the usual suspects” and also avoids committing oneself to gain time; and a formal work-up involving iterative hypothesis testing and refinement towards a definitive diagnosis. \(^{244}\) Factors that determine CDRs include affective states, fatigue, sleep debt, and sleep deprivation. \(^{245}\) There are many cognitive and affective debiasing strategies to reduce diagnostic error. \(^{246}\) Reflective practice by physicians and hospitals may reduce diagnostic errors. \(^{247}\)

An alternative perspective \(^{248}\) to clinical physician reasoning argues that diagnostic errors do not just result from cognitive biases or undue reliance on system 1 fast (non-analytical) reasoning. \(^{249}\) This perspective contends that diagnostic errors can be associated with both system 1 fast (non-analytical) reasoning and system 2 (analytical) reasoning. \(^{250}\) There is evidence that encouraging both system 1 and system 2 reasoning, that is dual-process reasoning, can improve diagnostic accuracy. \(^{251}\) Therefore, mindfulness about utilizing dual process reasoning can improve diagnostic accuracy.

Several studies have investigated the impacts of mindfulness on physicians and their patients. One study found that an
intensive eight-week mindfulness continuing medical educational program was associated with short-term and sustained improvement in primary care physicians’ burnout, capacity for relating to patients, psychological distress, and well-being.\textsuperscript{252} Another study found that clinician physician self-rated mindfulness was associated with more patient-centered communication and have more satisfied patients.\textsuperscript{253} A pilot study found that an abbreviated mindfulness intervention was associated with reductions in anxiety, depression, job burnout, and stress and increased job satisfaction, quality of life, and compassion among primary care clinician physicians.\textsuperscript{254}

A number of studies “consistently demonstrate that anxiety, depression, burnout, and general psychological distress are common among medical students.”\textsuperscript{255} As of 2014, 79\% (to be precise, 111 of 140) of the medical schools accredited by the Association of American Medical Colleges offered mindfulness-related activities to medical students, patients, or health care staff.\textsuperscript{256} Several studies have investigated the impacts of mindfulness on premedical students, medical students, and residents. One study found the short-term effects of medical and premedical students taking an eight-week mindfulness-based stress reduction elective course included less self-reported state and trait anxiety, less reported overall psychological distress including depression, higher scores on overall empathy levels, and higher scores on a measure of spiritual experiences, with all of these observations during the students’ final examination period.\textsuperscript{257} Pilot mindfulness-based wellness programs during resident physician training have found improved burnout, empathy, resilience, self-compassion, and stress reactions among residents at several medical schools, including Duke University.\textsuperscript{258}

\textsuperscript{252} Michael S. Krasner et al., \textit{Association of an Educational Program in Mindful Communication with Burnout, Empathy, and Attitudes Among Primary Care Physicians,} 302 J. AM. MED. ASSOC. 1284, 1284 (2009); Howard B. Beckman et al., \textit{The Impact of a Program in Mindful Communication on Primary Care Physicians,} 87 ACADEM. MED 815, 815 (2012).

\textsuperscript{253} Mary Catherine Beach et al., \textit{A Multicenter Study of Physician Mindfulness and Health Care Quality,} 11 ANNALS FAM. MED. 421, 421 (2013).

\textsuperscript{254} Luke Fortney et al., \textit{Abbreviated Mindfulness Intervention for Job Satisfaction, Quality of Life, and Compassion in Primary Care Clinicians: A Pilot Study,} 11 ANNALS FAM. MED. 412, 412 (2013).


\textsuperscript{256} Nicholas Barnes et al., \textit{An Examination of Mindfulness-Based Programs in US Medical Schools,} MINDFULNESS 489, 491 (2016).

\textsuperscript{257} Shauna L. Shapiro et al., \textit{Effects of Mindfulness-Based Stress Reduction on Medical and Premedical Students,} 21 J. BEHAV. MED. 581, 596–97 (1998).

\textsuperscript{258} Brian E Goldhagen et al., \textit{Stress and Burnout in Residents: Impact of Mindfulness-Based Resilience Training,} 6 ADVANCES MED. EDUC. & PRAC. 525, 531 (2015).
the University of Massachusetts, the University of Toledo, and the University of Wisconsin, Madison. These promising studies are important because another recent study found that 60.3% of American residents and fellows, across all specialties, experience burnout, defined as meeting these three criteria: exhaustion upon merely thinking about work, physical symptoms of fatigue and sleeping difficulties; depersonalization, or losing empathy in interpersonal relationships; and decreased sense of personal achievement. Increased physician resilience is associated with improved quality of patient care, reduced errors and less physician attrition. High daily stress, burnout, and turnover are also problems for many K–12 teachers. Mindfulness-based professional development programs have been found in a randomized control trial to “reduce stress and improve teachers’ performance and classroom learning environments.”


267. Patricia A. Jennings et al., Improving Classroom Learning Environments by Cultivating Awareness and Resilience in Education (CARE): Results of a Randomized Controlled Trial, 28 SCH. PSYCHOL. QUART. 374, 374 (2013). See also Patricia A. Jennings, CARE for Teachers: A Mindfulness-Based Approach to Promoting Teachers’ Social and Emotional Competence and Well-Being, in Schonert-Reichl & Roesser, supra note 10, at 144; Patricia A. Jennings et al., Improving Classroom Learning Environments by Cultivating Awareness and Resilience in Education (CARE): Results of Two Pilot Studies, 46 J. CLASSROOM INTERACTION 37, 37 (2011); Jennifer L. Frank et al., Mindfulness-Based Interventions in School Settings: An Introduction to the Special Issue, 10 RES. HUM. DEV. 205, 206 (2013); Linda Lantieri et al., Cultivating Inner Resilience in Educators and Students: The Inner Resilience Program, in Schonert-Reichl & Roesser, supra note 10, at 120; Robert W. Roesser et al., Mindfulness Training and Teachers’ Professional
Dr. Luke Fortney and his colleagues at the Department of Family Medicine and Community Health, School of Medicine and Public Health, University of Wisconsin have created an accessible and practical website, with links to short audio podcasts and videos about mindfulness, research articles about mindfulness, a video presentation about evidence-based mindfulness, and other helpful mindfulness resources. The website suggests incorporating three mindfulness steps in one’s daily life and practice: Pause, Presence, and Proceed. On the Pause webpage, under the heading of Resources, there is a link titled SOLAR practice table, that downloads a two-page handout about how to start mindfulness meditation practice utilizing these two mnemonic acronyms: SOLAR and TIES. SOLAR stands for Stop, Observe, Let it be, And Return. TIES stands for Talk/Thoughts, Images, Emotional feelings, and physical Sensations. The handout provides more details about each step in SOLAR and each component of TIES. On the Presence webpage, under the heading of Resources, there is a link titled 6 Point Body Scan Practice, that downloads a one-page handout about


276. Pause, supra note 273.

277. Presence, supra note 274.
how to practice a six-point body scan of one’s feet, knees, hips, belly/lower back, heart center, and face. On the Proceed webpage, under the heading of Resources, there is a link titled Take the Valued Living Questionnaire, that downloads a two-page handout consisting of a Valued Living Questionnaire Self-Care Assessment in two parts, and another link titled Contemplative Writing Exercise, that downloads a three-page handout consisting of a part about reflection and awareness and another part about creating kind intention.

F. Mindfulness in Lawyer Decision-Making

Lawyers make decisions that are analogous to physicians’ diagnostic and treatment decisions. Litigators decide on a theory of the case and litigation strategy. Transactional lawyers decide on a theory of the deal and implementation strategy. Negotiators and mediators decide on a theory of the conflict and resolution strategy. Collaborative lawyers decide on a theory of the collaboration and realization strategy. In fact, “sound decision making actually is the essence of effective lawyering.” The decisions lawyers make are influenced by CDRs to clients and ADRs to clients. Some of these CDRs and ADRs can lead to legal errors. Reflective practice by lawyers and legal organizations may reduce legal decision-making errors. Mindfulness about utilizing dual process reasoning may also improve legal decision-making. The practice of law involves many psychological processes including legal categorization, legal narrative, and legal rhetoric. Being mindful should help lawyers improve their ability to determine if a specific case falls into the scope of a legal category, rule, or precedent; tell narratives to refute or support legal claims; and craft language to be rhetorically persuasive of a particular viewpoint.

An open question is whether lawyer mindfulness is associated

278. Proceed, supra note 275.
with more client-centered communication, lawyer compassion, and satisfied clients. Another open question is whether taking an elective, eight-week mindfulness-based stress reduction course would reduce law students' anxiety, depression, and stress in addition to increase law students' compassion, empathy, and subjective well-being. In July 2016, two attorneys Jenna Cho and Karen Gilford published a book written for lawyers The Anxious Lawyer: An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation. An anonymous law professor explains why one should read this book. A related behavioral study of 46 lawyers recruited from a book club hosted by the National Association of Women Lawyers, a gender inclusive group dedicated to advancement of women lawyers in United States, who participated in an 8-week, mindfulness program based on Cho and Gifford's book, The Anxious Lawyer, found significant reductions in anxiety, depression, and stress in addition to significant increases in mindful cognition, perceived effectiveness, positive mood, and resiliency. A study of experienced mediators found a strong correlation between self-reported mindfulness and well-being.

III. CAN PRACTICING MINDFULNESS IMPROVE ETHICS?

This part of the Article analyzes how practicing mindfulness can improve people's ethical reasoning and in so doing, their ethical conduct via these various alternative, complementary paths: (1) providing engagement, meaningfulness, and purpose; (2) improving ethical decision-making and reducing racially discriminatory behavior; (3) reducing affective forecasting biases; (4) reducing cognitive biases; (5) increasing intrinsic motivation; (6) decreasing extrinsic motivation; (7) increasing autonomy;


286. CHO & GIFFORD, supra note 284.


(8) increasing competence; (9) increasing relatedness; (10) increasing positive Subjective Well-Being (SWB); (11) decreasing negative SWB; (12) increasing moral awareness; (13) improving moral judgment and reasoning; (14) increasing moral motivation; (15) strengthening moral implementation; (16) reducing or offsetting the affective benefits from experiencing a cheater’s high; (17) reducing biological and hormonal bases of unethical conduct; (18) reducing addictions and cravings; and (19) providing real options to respond thoughtfully instead of reacting mindlessly. This part of the Article analyzes theoretical, empirical, and experimental research that shows or suggests how practicing mindfulness can improve people’s ethical thinking and consequently their behavior through each of the above changes.

Kenneth Arrow, a 1972 economics Nobel laureate, started his reply to a modest question from Kristen Renwick Monroe, Director of the Interdisciplinary Center for the Scientific Study of Ethics and Morality at the University of California, Irvine, “[h]ow did you come to be interested in ethics?” with this fascinating response:

To say that I’m interested in ethics is probably just to say that I’m a human being. You’re brought up full of ethical concerns; these things are part and parcel of life. The real issue is whether you think about ethical concerns rather than just accept them. Will you raise the level of consciousness?

Practicing mindfulness can raise awareness about and consciousness of ethical concerns by focusing attention at and cultivating reflection about ethical issues.

A. Mindfulness Can Provide Engagement, Meaningfulness, and Purpose

A recent positive psychology theory about mindfulness proposes that practicing mindfulness can lead to greater engagement, meaningfulness, and eudaimonic well-being. This mindfulness-to-meaning theory (MMT) advances the perspective that mindfulness enhances interoceptive attention, expands cognitive scope that facilitates reappraisal of adversity and savoring of positive experience, introduces flexibility of cognitive

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appraisals, and ends with deepened capacities for creating meaning and more engaged living. A diagrammatic presentation of the MMT depicts a cycle of stages unfolding over time with mindfulness evolving into meaning: stress appraisal, decentering, metacognitive awareness, paying broadened attention to context, positive reappraisal, paying attention to contextual features that support reappraisal, experiencing positive emotions, savoring hedonic experiences and implied meanings, taking adaptive or prosocial actions, and having a greater sense of meaningfulness or purpose in life. A number of psychologists commented on the MMT in a special issue of Psychological Inquiry devoted to this theory, resulting in a response by the developers of the MMT. Recent social genomics research found that people with eudaimonic well-being in terms of being meaningfully engaged with life, having a sense of purpose, and who were flourishing, were more likely to exhibit decreased inflammation and increased antiviral response, which is the opposite gene profile of those who suffer from social isolation. It is crucial to emphasize this research finds a correlation, and not a causal link, between thriving and favorable gene expression.
The MMT introduces a process by which mindfulness may lead people to have greater meaning and purpose in their lives. People are perpetual “meaning-making machines.” We crave and create meaning as we constantly and continually rewrite our life stories. We tell others and ourselves narratives to make sense of and have meaning in our lives. The search for meaning can be a very powerful motivator in our behavior. Having a sense of meaning and purpose can itself sustain people behaving ethically in the face of life’s inevitable, numerous, and random hardships, inequities, and misfortunes. In Darmok, episode two from season five of the science fiction television series, Star Trek: The Next Generation, senior members of the starship Enterprise have trouble understanding the alien race of Tamarians (also known as the Children of Tama) that communicate only by allegory. The mutual communication difficulty is due to a lack of shared, common stories. Some commentators and viewers believe this episode to be one of the best or most profound of the series.

During his closing remarks of the 2017 University of Colorado Law School faculty scholarship retreat: Making a Difference: Impactful Legal Scholarship, Dean S. James Anaya offered a top-five list of why professors do research: (5) pride, (4) tenure, (3) camaraderie, (2) impact, and (1) joy. The joy or happiness or eudaimonic well-being that professors experience from crafting scholarship is related to creating meaning and purpose in academic life. University of Richmond law school professor Shari Motro writes from her heart about law professors putting our hearts in our legal scholarship.

I lead several in-class discussions about mindfulness and career fulfillment or satisfaction in my section of Legal Ethics and

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303. Dean S. James Anaya, University of Colorado Law School, Closing Remarks at the University of Colorado Law School Faculty Scholarship Retreat: Making a Difference: Impactful Legal Scholarship (2017).

Professionalism: Business Law Issues. We place mindfulness into a broader context in our discussions by considering how mindfulness can help lawyers to find and sustain passion, meaning, and purpose in their careers. We talk about how mindfulness enables us to utilize our character strengths daily at work, home, and play.\(^{305}\) We analyze how our jobs, careers, and callings differ from each other.\(^{306}\) We think about how mindfulness can help us craft positive identity and meaning professionally.\(^{307}\) We ask how a sense of the bigger picture and keeping in mind perspective relates to mindfulness by viewing and having a conversation about a film titled Happy,\(^{308}\) a nine-minute cinematic video titled This is Water,\(^{309}\) based on an essay by David Foster Wallace entitled This Is Water: Some Thoughts, Delivered on a Significant Occasion, about Living a Compassionate Life,\(^{310}\) and a three and a half minute video of Carl Sagan reading an excerpt from Pale Blue Dot.\(^{311}\)

**B. Mindfulness Facilitates Debiasing**

Mindfulness can help us acknowledge and alter the way that we see the world through filters of unconscious bias.\(^{312}\) Some unethical decisions are the result of racially discriminatory animus,\(^{313}\) overestimating the affective impacts of positive and negative events,\(^{314}\) implicit biases against groups of people,\(^{315}\) the sunk-cost bias or fallacy,\(^{316}\) and seeking revenge or vengeance to

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307. See, e.g., Amy Wrzesniewski et al., Job Crafting and Cultivating Positive Meaning and Identity In Work, 1 ADVANCES POSITIVE ORG. PSYCHOL. 281 (2013).
308. HAPPY (Wadi Rum Films 2011).
310. David Foster Wallace, This is Water: Some Thoughts, Delivered on a Significant Occasion, About Living a Compassionate Life (2009).
rectify perceived injustice or unfairness.\textsuperscript{317} Recent research finds that practicing mindfulness can decrease racially discriminatory behavior,\textsuperscript{318} the affective impact bias also known as duration neglect,\textsuperscript{319} implicit age/race bias,\textsuperscript{320} and sunk-cost bias,\textsuperscript{321} in addition to increasing the willingness to accept inequitable or unfair outcomes.\textsuperscript{322} University of San Francisco law school professor Rhonda V. Magee adapted contemplative practices to cultivate awareness of racial bias,\textsuperscript{323} known as Mindfulness-Based ColorInsight Practices.\textsuperscript{324}

Further sources of decision-making bias and unethical behavior are feelings of arrogance, hubris, invincibility, overconfidence, and understanding that spring from an illusion of knowledge.\textsuperscript{325} Many people often believe and feel they know more than they actually do because they experience an Illusion of Explanatory Depth (IoED).\textsuperscript{326} We often confuse the information that we personally know with the information that other people around us know,\textsuperscript{327} information that resides, and is stored, in the world around us,\textsuperscript{328} or the information that we can easily find by searching the internet.\textsuperscript{329} Such lack of information separation that is due to economically efficient communities of knowledge and learning, distributed cognition, and cognitive division of labor causes many of us to assume that we know (much) more than we do and consequently “make decisions—even very consequential

\begin{itemize}
\item \textsuperscript{317} Francesca Gino & Lamar Pierce, Dishonesty in the Name of Equity, 20 Psychol. Sci. 1153, 1157–59 (2009).
\item \textsuperscript{318} Adam Lueke & Bryan Gibson, Brief Mindfulness Meditation Reduces Discrimination, 3 Psychol. Consciousness: Theory, Res. & Prac. 34, 39 (2016).
\item \textsuperscript{319} Amber S. Emanuel et al., The Role of Mindfulness Facets in Affective Forecasting, 49 Personality & Individual Differences 815, 816–18 (2010).
\item \textsuperscript{320} Adam Lueke & Bryan Gibson, Mindfulness Meditation Reduces Implicit Age and Race Bias: The Role of Reduced Automaticity of Responding, 6 Soc. Psychol. & Personality Sci. 284 (2015).
\item \textsuperscript{321} Andrew C. Hafenbrack et al., Debiasing the Mind Through Meditation: Mindfulness and the Sunk-Cost Bias, 25 Psychol. Sci. 369, 374 (2014).
\item \textsuperscript{323} Rhonda Magee, How Mindfulness Can Defeat Racial Bias, Greater Good Magazine (May, 14, 2015), http://greatergood.berkeley.edu/article/item/how_mindfulness_can_defeat_racial_bias [https://perma.cc/59AX-AFTU].
\item \textsuperscript{325} SLOMAN & FERNBACH, supra note 159.
\item \textsuperscript{326} Id. at 21.
\item \textsuperscript{327} Id. at 121.
\item \textsuperscript{328} Id. at 105.
\item \textsuperscript{329} Id. at 131.
\end{itemize}
decisions—without deep understanding.”\textsuperscript{330} The solution, as Sloman and Fernbach explain in detail, is not more information.\textsuperscript{331} In addition, a growing body of economic and psychological research documents that many people avoid information when that information affects their beliefs, happiness, or identities, even if that information is free and useful.\textsuperscript{332}

Because lawyers are by definition experts about law and legal matters, our legal expertise often leads us to mistakenly believe that we also have expertise about non-legal matters, including ethics. The American Bar Association (ABA) requires that for law schools in the United States to be accredited, they must “offer a curriculum that requires each student to satisfactorily complete at least the following: (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values, and responsibilities of the legal profession and its members . . . .”\textsuperscript{333} Additionally, admission to the bar in all but three U.S. jurisdictions, Maryland, Wisconsin, and Puerto Rico, requires passing the Multi-State Professional Responsibility Examination (MPRE) (Connecticut and New Jersey also will accept successful completion of a law school course about professional responsibility instead of a passing score on the MPRE).\textsuperscript{334} The MPRE is a two-hour, 60-question multiple-choice examination and tests whether one has effectively memorized the ABA Model Rules of Professional Conduct\textsuperscript{335} and ABA Model Code of Judicial Conduct.\textsuperscript{336} The MPRE does not test if one has even a modicum of personal ethics or moral values.\textsuperscript{337} Because most law students develop sufficient expertise to successfully complete the ABA required law school course about legal ethics and professionalism in addition to receive a passing score on the MPRE, law students have a tendency to experience an illusion of ethical knowledge that leads to unethical behavior. Practicing mindfulness can help law students and lawyers realize they experience such an ethical knowledge illusion.

Two laboratory studies found that people who were mindful were more likely to care about such internal rewards as integrity, moral identity, and honesty, instead of such external rewards as

\begin{itemize}
\item \textsuperscript{330} \textit{Id.} at 247.
\item \textsuperscript{331} \textit{Id.} at 240–44.
\item \textsuperscript{332} Russell Golman et al., \textit{supra} note 240, at 179–80
\item \textsuperscript{333} ABA Standard 303(a)(1) (2017).
\item \textsuperscript{334} \textit{The Multi-State Professional Responsibility Examination (MPRE)}, NAT’L CONF. BAR EXAMINERS, http://www.ncbex.org/exams/mpre/ [https://perma.cc/DE5W-CR2W].
\item \textsuperscript{335} \textit{MODEL RULES OF PROF’L CONDUCT} (1983).
\item \textsuperscript{336} \textit{MODEL CODE OF JUDICIAL CONDUCT} (2011).
\item \textsuperscript{337} Huang, \textit{supra} note 84, at 308.
\end{itemize}
monetary gains. Psychologists Edward L. Deci and Richard Ryan expanded on research about intrinsic versus extrinsic motivation by proposing Self-Determination Theory (SDT). SDT predicts, and a large body of empirical research has documented, that intrinsic rewards are associated with SWB, extrinsic rewards are associated with negative SWB, and that people thrive when they experience autonomy, competence, and relatedness. Recall that practicing mindfulness can improve self-knowledge of personality, emotions, thoughts, and behavior. Such greater self-knowledge can in turn increase autonomy, competence, and relatedness, and in so doing increase positive SWB. Empirical research utilizing data the World Values Survey found that “greater happiness results in improved ethical judgments, after correcting for bicausality and controlling for income and other factors.” Other empirical evidence that life satisfaction is correlated with risk avoidance also suggests that happier people will avoid the risks of unethical behavior.

Anne Brafford, as chairperson of the Attorney Well-Being Committee of the American Bar Association Law Practice Division, wrote a letter representing the position of the ABA Law Practice Division commenting on the ABA’s proposed MCLE Rule and advocating that it should be expanded to provide CLE credit for well-being topics, including mindfulness (meditation). Brafford also recently wrote a related tour-de-force book, Positive Professionals: Creating High-Performing, Profitable Firms Through the Science of Engagement, that explains how law firms and other legal organizations can utilize the insights of positive psychology and well-being research to foster sustainable, thriving cultures.

340. Id. at 3–25; Huang & Felder, supra note 14, at 744–45 and references therein.
341. Carlson, supra note 44, at 176.
343. Robert J. B. Goudie et al., Happiness as a Driver of Risk-Avoiding Behavior (Ctr. for Econ. Performance, CEP Discussion Paper No. 1126, 2012) (providing empirical evidence that happier people are less attracted to risker behavior).
345. Anne Brafford, AWBC’s comments to the ABA’s Model MCLE Rule Draft.
346. Id. at 9-10.
347. Brafford, supra note 21.
C. Mindfulness Facilitates Moral Development

Psychologist James Rest developed a “four component model” that identified four possible reasons to explain why people may unintentionally act immorally: moral unawareness, inadequate moral reasoning, deficient moral motivation, and unsuccessful moral implementation. Rest viewed moral development as entailing developing proficiency in these corresponding four processes: moral sensitivity, moral judgment and reasoning, prioritizing moral decision-making, and effective moral implementation. Ultimately, whether mindfulness leads to more ethical behavior depends upon one’s precise definition of mindfulness and exactly what one is mindful about. If mindfulness is defined as paying attention in a caring, discerning, and open-hearted way, with kind curiosity to ourselves, others, and our environment (instead of just paying bare attention), then such a definition contains an intention of caring about ourselves, others, and our environment. People can be narrow or wide in the scope of what they are mindful about. If the scope of what people are mindful about is wide enough to include others, then practicing mindfulness can nurture moral development by fostering increased moral awareness and sensitivity, improved moral judgment and reasoning, more moral motivation and prioritization, and sustained moral implementation.

Six experimental studies found that despite predicting they will feel guilty and suffer greater negative affect after behaving unethically, people who cheated consistently felt higher positive affect than those who did not. The researchers concluded that cheating (on solving anagrams under time pressure) was associated with feelings of self-satisfaction as opposed to

350. Id. (discussing the problems of intuitive, quick decision-making and failing to consider alternative viewpoints).
351. Id. (discussing the problems of motivated reasoning and groupthink).
352. Id. (discussing the problem of designing effective organizational structures).
353. Rest, supra note 348, at 29.
356. Id. at 542 fig. 5.
rationalizing unethical behavior or self-deception.\textsuperscript{357} The researchers observed how their finding that study participants “mispredicted the affective consequences of unethical behavior”\textsuperscript{358} exemplifies an affective forecasting bias or error. This observation suggests that practicing mindfulness may mitigate this error. The researchers also make the suggestion that “prompting individuals to ruminate about their actions may increase the negative affect that individuals experience from engaging in unethical behavior.”\textsuperscript{359} Perhaps mere mindfulness as opposed to rumination about one’s actions is enough to reduce unethical behavior.

\textbf{D. Mindfulness Mitigates Biological Bases of Unethical Behavior}

Extending the above research, a pair of studies found that more cheating is associated with larger decreases in cortisol and negative affect,\textsuperscript{360} and elevated cortisol and testosterone levels are associated with unethical behavior.\textsuperscript{361} This research suggests that people may cheat in order to cope with, and to reduce, anxiety and stress.\textsuperscript{362} If this is the case, then practicing mindfulness by reducing anxiety and stress can reduce cheating to relieve physiological and psychological distress.

Two of the above researchers found in five other experimental studies evidence that emotional suppression and reappraisal to regulate aversive effective responses encourages utilitarian as opposed to deontological choices in emotionally charged decision-making situations.\textsuperscript{363} This research suggests that practicing mindfulness by reducing the need to conceal emotions can reduce the preference for utilitarian over deontological choices.\textsuperscript{364}

Two researchers found in four experimental studies evidence of a morning morality effect, in which “undergraduate students and a sample of U.S. adults engaged in less unethical behavior (e.g., less lying and cheating) on tasks performed in the morning than on the same tasks performed in the afternoon.”\textsuperscript{365} Later,

\begin{itemize}
  \item 357. Id. at 541–42.
  \item 358. Id. at 543.
  \item 359. Id. at 544–45.
  \item 361. Id. at 891–93.
  \item 362. Id. at 894–96.
  \item 364. Id. at 49, 56–59.
  \item 365. Maryam Kouchaki & Isaac H. Smith, The Morning Morality Effect: The Influence
three researchers found in two experimental studies evidence of “a chronotype morality effect in which the fit between an individual’s chronotype and time of day predicts the individual’s ethicality.”

This research qualifies and suggests a boundary condition on the morning morality effect. The main takeaway of this research is to be aware of, embrace, and understand your chronotype and if possible, align your chronotype and work schedule to better engage in ethical decision-making. Practicing mindfulness about your chronotype and work schedule can and should lead to increased opportunities to make decisions ethically.

E. Mindfulness in Buddhism and Buddhist Economics

The current American version of mindfulness is explicitly agnostic concerning the intentions and motivations that people may have for desiring to practice mindfulness. Hamilton College sociology professor Jamie Kucinskas conducted a fascinating project involving ethnographic studies and semi-structured in-depth interviews with contemplative leaders to explain how mindfulness transformed from venerable Buddhist-inspired meditation into commodified secular panacea. The core, fundamental, and historical roots of mindfulness include a radical, egalitarian, political, philosophical, and social critique, message, movement, project, and vision about an artificial separation of self and other sentient beings. Some Zen practitioners believe the current American secular incarnation of mindfulness is problematic for its amorality.

Robert Meikyo Rosenbaum, a neuropsychologist and psychotherapist, cogently discusses how neuroscience and psychology research about the efficacy of practicing mindfulness of Time of Day on Unethical Behavior, 25 PSYCHOL. SCI. 95, 95 (2014).


367. Id. at 2273.


compared to alternatives (such as cognitive behavioral therapy, medication, and relaxation) distracts us and misses far more crucial issues (such as motivation to practice mindfulness, socioeconomic status, and the relationship between a mindfulness student and a mindfulness teacher). Some religious scholars question whether a secular form of mindfulness is even possible. Some scholars defend the popularity and spreading of the many contemporary versions of mindfulness, while others do not. Others are concerned over the possible misappropriation of modern, secularized, self-help, and ethics-free mindfulness training into techniques, tools, and strategies to pacify employees, reproduce oppressive corporate or institutional power hierarchies, and sustain toxic organizational cultures. There are multiple versions of mindfulness today differing in multiple dimensions. Part of the difficulty in writing about mindfulness is there are many related yet distinct concepts of mindfulness. Many scholarly disciplines analyze mindfulness, including economics, neuroscience, philosophy, psychology, and religion. Even within each of the disciplinary fields that engage mindfulness, there is disagreement about mindfulness.

A number of scholars have observed that a standard definition of mindfulness as present-centered non-judgmental awareness ignores crucial features of mindfulness in classic Buddhist accounts. Jon Kabat-Zinn distinguishes between being judgmental and being discerning:

I am also making a big distinction between judging which, in the way I am using the term, has to do with . . . —I like this and I don't like that, that's good, this is bad—and

373. Robert Rosenbaum, Mindfulness Myths: Fantasies and Facts, in id. at 53, 63-68.
378. Farb, supra note 377, at 1067.
discernment, which is what you are talking about, which is more the kind of operation of wisdom where you can see the subtleties—the thousand shades of grey . . .—you know that kind of thing, which is absolutely essential to and part and parcel of the cultivation of mindfulness.\textsuperscript{380}

Kabat-Zinn states this about being non-judgmental: “[Y]ou could say, if you wanted a reason for doing it, it’s in the service of self-understanding and the cultivation of wisdom and compassion.”\textsuperscript{381} A recent study found that participating in a smartphone-based compassionate meditation program increased real-money charitable donations.\textsuperscript{382}

Buddhist scholar B. Alan Wallace cautions that “it’s incorrect to equate bare attention with mindfulness.”\textsuperscript{383} He also distinguishes between right mindfulness and wrong mindfulness or what one might also call mindless mindfulness:

A sniper hiding in the grass, waiting to shoot his enemy, may be quietly aware of whatever arises with each passing moment. But because he is intent on killing, he is practicing wrong mindfulness. In fact, what he’s practicing is bare attention without an ethical component. Generally speaking, right mindfulness has to be integrated with . . . introspection involving clear comprehension—and it is only when these two work together that right mindfulness can fulfill its intended purpose. Specifically . . . right mindfulness has to occur in the context of the full Noble Eightfold Path: For example, it must be guided by right view, motivated by right intention, grounded in ethics, and be cultivated in conjunction with right effort. Without right view or right intention, one could be practicing bare attention without its ever developing into right mindfulness. So bare attention . . . represents only the initial phase in the meditative development of right mindfulness.\textsuperscript{384}

In Buddhism, practicing mindfulness occurs within the context of the Middle Way, which “refers to the Noble Eightfold Path, a pan-Buddhist principle (common in all major Buddhist traditions), but a non-theistic and non-faith-dependent

\begin{itemize}
\item \textsuperscript{380} This is not McMindfulness by Any Stretch of the Imagination, PSYCHOLOGIST, BRIT. PSYCHOL. SOC., https://thepsychologist.bps.org.uk/not-mcmindfulness-any-stretch-imagination [https://perma.cc/QHN5-NYZU].
\item \textsuperscript{381} Id.
\item \textsuperscript{382} See generally Yoni K. Ashar et al., Effects of Compassion Meditation on a Psychological Model of Charitable Donation, 16 EMOTION 691 (2016).
\item \textsuperscript{384} Id. at 62–63.
\end{itemize}
contemplative practice guideline for overcoming suffering and achieving happiness in life.”

In turn, the Middle Way itself is part of the Four Noble Truths that are the heart of Buddhist teachings: (1) Suffering is ubiquitous, (2) Suffering is a consequence of psycho-spiritual ignorance resulting from a distorted perception of realities in life, (3) The cessation of suffering is possible, and (4) The path to the cessation of suffering is the Middle Way or Noble Eightfold Path.

The Noble Eightfold Path consists of these eight interdependent, interrelated, nonlinear, overlapping, and simultaneous practice guidelines: right view, right intention, right speech, right action, right livelihood, right effort, right mindfulness, and right concentration. There is a lot of academic discussion and commentary over the precise meaning of the adjective “right” in front of each of the above eight areas of the Noble Eightfold Path. Many scholars believe that “right” is better translated as “skillful” or “wholesome” with a particular connotation of non-harm. The nonlinearity and interconnectedness of the eight areas of the Noble Eightfold Path is perhaps best illustrated by the fact that “Right Mindfulness and Right Intention go into all parts of the path.” Thus, “Right Mindfulness is the term used in Buddhism to highlight the fact that mindfulness skill when developed with a wrong intention, e.g., creating more violence in the world, cannot be considered the proper kind of mindfulness that leads to the alleviation of existential suffering.”

A sniper who practices mindfulness with the intention of being more accurate in killing is not an example of right mindfulness.

A core Buddhist idea that modern scientific research substantially corroborates is that people misperceive their world and their misperceptions can cause them and others to suffer.
Buddhist philosophy views cravings and addictions as the root causes and sources of all suffering. From a Buddhist perspective, practicing mindfulness has just one purpose: to end suffering. British economist Ernst Friedrich Schumacher introduced the phrase “Buddhist economics” in a widely-read essay that is reprinted in a book collection of his essays. Schumacher stated that “Buddhist economics must be very different from the economics of modern materialism, since the Buddhist sees the essence of civilization not in a multiplication of wants but in the purification of human character.” University of California, Berkeley economist Clair Brown extends Schumacher’s vision of Buddhist economics and reminds us:

Buddha noted that people suffer needlessly because they are disconnected from their true nature, and people can end their suffering by giving up their sense of separateness and their delusions. Being in touch with our true nature, we can be happy and enjoy material things and activities without becoming attached to them.

Brown observes in her new book how “Buddha taught that all people suffer from their own mental states, with feelings of discontent that come from desiring more and more . . . . In this endless cycle of desire, we are continuously left wanting more without ever finding lasting satisfaction.” American psychologist Tim Kasser is a well-known advocate of a more inwardly richer lifestyle than consumerism and materialism offer.

F. Mindfulness Facilitates Non-Addiction

Neuroscientist and psychiatrist Richard Brewer “has


397. Id. at 59.


developed and tested novel mindfulness programs for habit change, including both in-person and app-based treatments (e.g. www.goeatrightnow.com, www.cravingtoquit.com).”401 Brewer summarizes his research about neurobiological and psychological mechanisms of habit formation, addiction, and mindfulness-based recovery402 in a book about reducing cravings and recovering from addictions through mindfulness.403

A recent study404 surveying 12,825 employed, licensed attorneys found that “alcohol use disorders and mental health problems are occurring in the legal profession at higher rates than in other professions and the general population”405 and “younger lawyers are the segment of the profession most at risk of substance abuse and mental health problems.”406 A 2014 study surveying the well-being of over 11,000 law students at fifteen law schools found that 17% screened positive for depression, 37% screened positive for anxiety, 14% used prescription drugs without a prescription in the prior year, 53% drank enough to become drunk at least once in the prior thirty days, 43% binge drank at least once in the prior two weeks, and 22% binge drank more than two times in the prior two weeks.407 The survey also found that only 4% of students had sought help for alcohol and drug problems, about 23% sought help for mental health problems, and over 60% expressed concern that seeking help is a potential threat to bar admission or finding a

401. CENTER FOR MINDFULNESS IN MEDICINE, HEALTH CARE, AND SOCIETY, Judson Brewer, MD, PhD, Faculty Page, UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL, http://www.umassmed.edu/cfm/about-us/people/meet-our-research-team/brewer-judson/ [https://perma.cc/Z4VC-CG6F].

402. See, e.g., Judson A. Brewer et al., Craving to Quit: Psychological Models and Neurobiological Mechanisms of Mindfulness Training as Treatment for Addiction, 27 PSYCHOL. ADDICTIVE BEHAV. 366, 373–75 (2013); Judson A. Brewer et al., Mindfulness-Based Treatments for Co-Occurring Depression and Substance Use Disorders: What Can We Learn from the Brain?, 105 ADDICTION 1698, 1700–02 (2010); Judson A. Brewer et al., Mindfulness Training and Stress Reactivity in Substance Abuse: Results from a Randomized, Controlled Stage I Pilot Study, 30 SUBSTANCE ABUSE 306, 313 (2009).


406. Id.

The above statistics are disturbing and tragic in terms of the prevalence of emotional, mental, and physical suffering by too many attorneys and law students. These statistics also should be troubling even for people who are not in the legal profession because lawyers who suffer from substance abuse are likely to be unable to effectively represent clients, thereby violating professional norms and the model rules of professional conduct about lawyer competence and diligence, and are also more likely to engage in unethical representation because one-half to three-quarters of the disciplinary actions against attorneys involve substance abuse. Substance abuse is a destructive form of self-medication that offers a temporary, unsustainable way to deal with anxiety, depression, and stress. Practicing mindfulness is a constructive form of self-medication that offers an ongoing, sustainable way to deal with anxiety, depression, and stress. Mindfulness meditation has also been found to relieve pain.

A way that mindfulness can help lawyers behave more ethically is by offering a practice that does not involve substance abuse to cope with and reduce anxiety, depression, and stress. Another way that practicing mindfulness can help lawyers behave more ethically is to reduce their cravings and addictions. Many lawyers (and non-lawyers) are addicted to mobile computing technology in the form of their smartphones. Some lawyers may self-medicate by craving and becoming addicted to many things, including: alcohol, antidepressants, opiates, stimulants,
sedatives, hallucinogens, sugars, fats, carbohydrates, and nicotine. Some corporate lawyers may also crave and become addicted to money, prestige, status, and wealth through conspicuous consumption, executive loans, golden handcuffs, McMansion lifestyles, and perks. Some trial attorneys may also crave and become addicted to the adrenaline of high-stakes litigation. Some lawyers may also have been law students who became addicted in law school to sometimes unhealthy habits of mind and speech, such as legalese, thinking like a lawyer, wielding the power of legal discourse, pessimism, defensive pessimism, or worrying. Lawyers are after all people and some lawyers, like some people, can be addicts that can function somewhat effectively in society while hiding their addictions until their addictions overwhelm them. Law students and lawyers can become addicted to the drama, stress, and pain of law school and law practice in the same way that people can become addicted to the drama, stress, and pain of a dysfunctional personal relationship.


427. See, e.g., Louis Tomlinson and Bebe Rexha with Digital Farm Animals performing the song Back to You on The Tonight Show Starring Jimmy Fallon, NBC television
I teach students in my section of the course Legal Ethics and Professionalism: Business Law Issues that they can and should be mindful over their finances and retirement planning.\footnote{See, e.g., Huang, supra note 35, at 5–6; Pamela Bucy Pierson, Economics, EQ, and Finance: The Next Frontier in Legal Education, 65 J. LEGAL EDUC. 864 (2016); PAMELA BUCY PIERSO, THE BUSINESS OF BEING A LAWYER 99–159 (2014).} I do this for these reasons. First, the class session exemplifies how mindfulness can improve decision-making about financial matters. Second, the heuristics about mindful decision-making spill over to non-financial matters. Third, if law students learn to be mindful enough to live sustainably below their means, they will have the freedom to quit or be fired instead of doing something unethical merely to maintain an exorbitant and lifestyle. Law students come to appreciate why and understand how practicing financial mindfulness and retirement planning helps them be able to say no thank you to becoming entangled in unethical career-ending professional disasters. Finally, discussing how mindfulness and financial decision-making are interdependent provides a pragmatic example of how mental health and financial health can affect each other.\footnote{Peter Dunn, Pete the Planner: How Mental Health Impacts Financial Health?, 10 USA TODAY (Aug. 26, 2017, 7:00 AM), https://usat.ly/2xBs6qx.}

\textbf{G. Saints Can Negotiate}

If mindfulness leads some attorneys to behave more ethically,\footnote{Leonard L. Riskin, Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior, 50 S. TEX. L. REV. 493, 495, 499 (2009); see also Brian C. Guna et al., Contemplation and Conversation: Subtle Influences on Moral Decision Making, 55 ACAD. MGMT. J. 13, 13, 16, 22–23, 23 fig.1, 25, 28 (2012) (providing experimental evidence supporting the hypothesis that contemplation leads to more ethical decisions (telling the truth) as compared to immediate choice). But see Ellen Waldman, Mindfulness, Emotions, and Ethics: The Right Stuff?, 10 NEV. L. J. 513, 528–29 (2010) (questioning how much practicing mindfulness by itself can lead to ethical behavior).} this raises an intriguing question of whether such attorneys will be as zealous advocates as lawyers who do not practice mindfulness.\footnote{Scott R. Peppet, Can Saints Negotiate? A Brief Introduction to the Problems of Perfect Ethics in Bargaining, 7 HARV. NEGOT. L. REV. 83, 84–90, 96 (questioning if the practice of mindfulness conflicts with being a partisan advocate).} One response is that maximizing zealousness is neither mandated by the rules of professional conduct nor necessarily even effective. Another response is that being ethical does not mean being less zealous, nor does being zealous mean being unethical. A third response is that mindfulness and the authentic happiness that comes from mindfulness can foster creativity and improve lawyers’ capabilities to make wise decisions.
and solve complex problems. A final response is that all fifteen participants in a study of lawyers who self-identified as having a Buddhist practice “concluded that they are better lawyers because of their Buddhist practices.”

The question of whether practicing mindfulness and practicing meditation help lawyers improve professionally is an important and unanswered empirical question. It also is a difficult question because what makes a lawyer good or better is hard to define. Mindfulness and meditation may always remain at the fringes of the legal profession, practiced primarily by individuals who are already suffering, or at least aware of their suffering. Though applicable to every area and aspect of law practice and legal education, mindfulness thus far has blossomed in specific proper subsets of law practice and legal education, including conflict resolution, clinical practice, community lawyering, social justice lawyering, and trial advocacy. Mindfulness is now a part of business and finance, yet is not part of business law. Mindfulness and meditation may not become accepted in or part of the mainstream of the legal profession unless and until empirical research proves that practicing mindfulness and practicing meditation make attorneys better professionals, or at least do not cause lawyers to lose their edge or suffer competitive

434. See generally Linder & Levit, supra note 157 (attempting to define what makes a good lawyer).
438. Cantrell, supra note 5, at 85–86 (discussing how mindfulness can affect clinical law professors).
or professional disadvantages. What constitutes effective lawyering is debatable. Traditional measures as books of business, hours billed, or profits per partner dominate the legal profession, especially in so-called “Big Law.” These familiar measures all have recognized gender equity, incentive, reliability, and work-life balance issues.

What constitutes effective lawyering is also multi-dimensional. Professors Marjorie Shultz and Sheldon Zedeck conducted an empirical research study from 1999 to 2008 involving over 2,000 graduates from Berkeley Law School to develop 26 lawyer effectiveness factors. More recently, Alli Gerkman, director of Educating Tomorrow’s Lawyers, and Logan Cornett, senior research analyst of the University of Denver Institute for the Advancement of the American Legal System, co-authored a report based on a survey in 2014-15 of more than 24,000 lawyers in all fifty states with different backgrounds, practice areas, and work settings. This report found that new lawyers required such characteristics as common sense, integrity, resilience, and work ethic, in addition to emotional, interpersonal, and cognitive intelligence. Other possible novel metrics of lawyer effectiveness include simulated negotiations or panels of judges and legal scholars reviewing simulated work products of meditators and non-meditators.

The multi-dimensional nature of attorney effectiveness means that interpersonal and even intertemporal comparisons of lawyers


449. Id.


451. Id.
will be difficult. Anytime there is more than one dimension on which to compare people, there is the possibility that individual A is better on some dimension(s), while individual B is better on some other dimension(s). A and B can represent different people or the same person at different points in time. A major question in managerial decision-making and operations research is how to make comparisons if there are multiple criteria involved. This open problem is naturally related to a celebrated and famous impossibility theorem from social choice theory about how to aggregate diverse individual preferences into a collective or social preference, that is attributed to 1972 economics Nobel laureate Kenneth J. Arrow. This conundrum is also related to many other logical paradoxes in law.

H. Mindfulness Provides Real Options to Act Ethically

Riskin cogently describes practicing mindfulness as providing an opportunity to, before acting, insert a “wedge of awareness” that can provide “the time and resources to make a wise decision.” By pausing and assessing a situation before acting, mindfulness effectively creates valuable flexibility by allowing its practitioners to exercise what financial economists call “real options” (which entail real assets and are analogous to such well-known financial options as stock options) to consider more carefully the consequences of making different choices. The central idea of a real options perspective to mindfulness is that mindfulness permits its practitioner to make decisions that alter

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awareness of information about BETs. In so doing, mindfulness provides its practitioner with opportunities to make decisions after seeing how events in life unfold. The value of delaying to act until there is more information available and utilizing that information before acting can be very large.\textsuperscript{460} In the language of system 1 fast thinking and system 2 slow thinking,\textsuperscript{461} mindfulness provides its practitioner with real options to let system 2 check, monitor, and possibly correct system 1. In other words, mindfulness allows one to respond thoughtfully instead of react automatically.\textsuperscript{462} In the language of simple heuristics, mindfulness provides its practitioner with real options to determine if the decision heuristics being employed are appropriate for the environment one is facing and if not to employ other more appropriate decision heuristics.\textsuperscript{463} In both the language of system 1 versus system 2 and that of simple heuristics, mindfulness grants its practitioner options to be free from habitual ways of thinking and behaving. In this way, exercising the real options that mindfulness provides enables people to exercise their free will. In the language of Buddhism:

A central teaching of Buddhism is that suffering arises from habitual ways of reacting. Indeed, if we pay attention, it is possible to observe how often our experiences are followed by automatic reactions, thoughts, or actions. . . . Informed by mindfulness, we are granted the option to choose a healthier or more constructive response. When we are able to see clearly beyond our first instincts and automatic reactions, an appropriate response is more likely to arise.\textsuperscript{464}

There are several qualitative (in the sense of providing the direction or sign, as opposed to quantitative in the sense of the amount or magnitude) conclusions (technically known as comparative statics results because they compare how changes in the exogenous parameters of an economic model will result in changes in the endogenous variables of that model) concerning how the value of the real option that mindfulness provides its practitioner changes as underlying parameters change.\textsuperscript{465} A fundamental qualitative result about real options is that the more


\textsuperscript{461} KAHNEMAN, supra note 198, at 13.

\textsuperscript{462} Id.

\textsuperscript{463} Id.; Huang, supra note 354, at 89.

\textsuperscript{464} Shauna L. Shapiro et al., \textit{What is Mindfulness, and Why Should Organizations Care About It?}, in \textit{Mindfulness in Organizations: Foundations, Research, and Applications} 17, 33 (Jochen Reb & Paul W. B. Atkins eds., 2015).

\textsuperscript{465} Huang, supra note 354, at 68–71.
uncertainty that people face, the more valuable are real options.\textsuperscript{466} For example, as the variance of the longevity risk and other risks that retirees face increases, the value of the real options that mindfulness provides in retirement planning increases. Uncertainty and a person’s ability to respond to uncertainty accordingly and flexibly are two key sources of value of the real options that mindfulness provides.\textsuperscript{467} The real options that mindfulness provides are less valuable the fewer alternative decisions that a person can make, the less risk that a person faces, and when the consequences of the risk that a person faces can be ignored. Conversely, the real options that mindfulness provides are more valuable the more alternative decisions that a person can make, the more risk that a person faces, and when consequences of the risk that a person faces cannot be ignored. In the context of (legal) ethics and professionalism, people face many possible choices, a lot of risk (about many variables), and important consequences. All of this just means that the real options to choose wisely are most valuable in making decisions about (legal) ethics and professionalism.

Mindfulness practice can improve people’s processes of making choices by providing real options in any situation to consciously, deliberatively, and thoughtfully respond instead of automatically, reflexively, and unconsciously react. Riskin, in a contemplative review\textsuperscript{468} of a book about improvisation and negotiation,\textsuperscript{469} connects improvisation with mindfulness by noting that “mindfulness means essentially saying ‘Yes’ to what is actually happening, rather than denying or suppressing or rationalizing it.”\textsuperscript{470} Several scenes from the musical film, \textit{La La Land},\textsuperscript{471} depict improvisational jazz.\textsuperscript{472} The important roles that improvisation can play in jazz and negotiation are just special instances of the more universal proposition, namely the important role that improvisation can play in life generally. One way to formally conceptualize what improvisation entails is by taking account of available current information and judiciously choosing

\begin{itemize}
  \item \textsuperscript{466} \textit{Id.} at 66, 71; Peter H. Huang, \textit{Lawsuit Abandonment Problems in Possibly Frivolous Litigation Games}, 23 REV. OF LITIG. 47, 89 (2004).
  \item \textsuperscript{467} Shapiro, supra note 464, at 40, 45, 68; Huang, supra note 466, at 89.
  \item \textsuperscript{469} Michael Wheeler, \textit{THE ART OF NEGOTIATION: HOW TO IMPROVISE AGREEMENT IN A CHAOTIC WORLD} 13–14 (2013).
  \item \textsuperscript{470} Riskin, supra note 468, at 620.
  \item \textsuperscript{471} See, e.g., \textit{LA LA LAND} (Summit Entertainment 2016).
\end{itemize}
to exercise certain real options. Successful improvisation requires accepting the current situation (whatever that may be) and then making choices about how to proceed in light of information about that current reality. The more variance there is, the more valuable the real options that mindfulness provides to improvise accordingly.

In a poignant scene from the movingly striking movie *Never Let Me Go*, based upon a novel of the same name, a British boarding school teacher asks her class if they know what happens to children when they grow up. She answers that they do not because nobody knows. Children may grow up to become actors who move to America, supermarket employees, school teachers, athletes, bus conductors, race car drivers, or in fact do just about anything they choose. Notice that the more volatility there is about future labor market conditions, educational opportunities, macroeconomic conditions, and financial market conditions, the more valuable are the real options that mindfulness offers people in their choice of work, careers, or professions. She then explains that no such uncertainty exists about what her students are growing up to become. This is because of their destiny of having been created to become donors of their vital organs. In other words, her students lack the many real options that people usually have over who they become.

In an article that applies the internal family systems model (IFSM) of psychotherapy to conflict resolution, Riskin explains how practicing mindfulness allows one to choose to have “the Self, a center of awareness, compassion, and clarity . . . lead the Parts and to make decisions,” where one’s sub-personalities or parts of one’s personality are “areas of the personality that are partly-autonomous and resemble and act as if they were individual human beings, having an age, beliefs, interests, perspectives, and the capacity to learn, negotiate, and change.” In the language of real options theory, mindfulness allows its practitioner to exercise the real option to have the Self lead “even though a Part or Parts often take over one’s consciousness, essentially, though temporarily, restricting the influence of the Self and other Parts.” The more variability there is in how a person’s sub-personalities differ from each other and a person’s Self, the

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473. *Never Let Me Go* (Fox Searchlight Pictures 2010).
477. Id.
478. Id.
more valuable are the real options that mindfulness provides to have the Self lead and make decisions instead of having a particular sub-personality do so. Riskin also wrote a poem about negotiation, the IFSM, and mindfulness.479

Once upon a time, one of my nephews, D, was misbehaving, so one of his aunts said to him that he should take a time out. D immediately said that D learned about this in school and that D should and would go hesitate. D meant meditate of course. D’s misremembering the word meditate as hesitate captures a crucial aspect of meditating, or just taking a few deep breathes and pausing, namely that such a space in time and moment of hesitation provides opportunities to exercise real options to first be more aware of one’s thoughts, feelings, and bodily sensations and then possibly change one’s behavior and in so doing, also change one’s thoughts, feelings, and bodily sensations.480 The more variability that one has in one’s repertoire or portfolio of possible behaviors, the more valuable are the real options that mindfulness provides to reflectively choose a particular course of behavior that is the most appropriate in the moment and situation over many other possible courses of behavior that are less appropriate in the moment and situation.

IV. CAN PRACTICING MINDFULNESS IMPROVE LEADERSHIP?

Many lawyers are leaders in American government,481 private for-profit and nonprofit organizations,482 and law firms.483 In a recent survey of over 24,000 lawyers in all fifty states from a range of backgrounds and practice settings, 76% viewed leadership as necessary for new lawyers in the short or long-term.484 Ben W. Heineman Jr., a Senior Fellow at the Harvard Kennedy School, Belfer Center for Science and International Affairs,485 advocates “graduates of law schools should aspire not just to be wise counselors but wise leaders; not just to dispense ‘practical wisdom’

482. Id. at 362–63.
483. Id. at 363.
485. CENTER FOR SCIENCE AND INTERNATIONAL AFFAIRS, Ben Heineman, Faculty Page, HARVARD BUSINESS SCHOOL, https://www.belfercenter.org/person/ben-heineman [https://perma.cc/77X5-QN3H].
but to be ‘practical visionaries’; not just to have positions where they advise, but where they decide.” Debora Rhode, the Ernest W. McFarland Professor of Law at Stanford Law School, director of the Stanford Center on the Legal Profession, and director of the Program in Law and Social Entrepreneurship, observes that leadership development “is largely missing in legal education.”

Rhode outlines how law schools can teach law students to develop many of the capabilities and skills that are characteristic of ethical leaders. A recent law school (and business school) graduate observes there is “a lack of appreciation that leadership, in legal education or the profession, is vital to wellbeing.”

Business law professor George Siedel discusses why there should be leadership education for business lawyers. Siedel believes “[t]here is a great opportunity for a law school to gain a first mover advantage by developing a third year capstone course on leadership.”

Frederick W. Smith, who is the chairman and CEO of the FedEx Corporation, recently stated in the foreword to a book about leadership that:

The concept of leadership is not a difficult one to understand. It’s simply about taking care of others and treating them fairly, communicating in a way that lets others know what they must do to be successful, and passing along praise for a job well done. It’s that straightforward, but it’s by no means intuitive. It must be learned and practiced.

Many scholarly disciplines have developed various theories of leadership. A recently completed ten-year empirical research
study based on a database about 17,000 C-suite executives (including 2,000 CEOs), the CEO Genome Project, identified these behavioral tendencies as characteristic of high-performing CEOs: (1) making decisions quickly, (2) adapting to change proactively, (3) engaging stakeholders impactfully, and (4) delivering reliability relentlessly. This part of the Article analyzes how practicing mindfulness can improve people’s leadership via these five complementary pathways: (1) mitigating several biases that impair leadership, (2) changing a group’s collective hormonal profile to improve group performance, (3) improving professionalism via being a reflective practitioner and/or double-loop learning, (4) improving people’s capabilities to become cognitive architects or translational leaders who help organizational members reimagine the meaning of their day-to-day work from simply many discrete, small tasks into their organization’s long-term core, unifying aspiration, and (5) improving people’s capabilities to become adaptive leaders who can mobilize others to undertake tough challenges and thrive.

A. Mindfulness Facilitates Debiasing Leaders

One way that practicing mindfulness might be able to improve leadership is by helping leaders to be more aware of and not believe in false myths about management, such as the success bias due to organizational inertia. There are numerous trade books about management, leadership, mindful leadership, and even the leading brain. Jennifer Mueller, who is a developmental and social psychologist in addition to a management scholar, recently wrote a book about creative change.

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497. See Jerker Denrell, Vicarious Learning, Undersampling of Failure, and the Myths of Management, 14 ORG. SCI. 227 (2003) (explaining what causes myths about management and how these myths are problematic to effective management).
499. See, e.g., ROGER E. ALLEN, WINNIE-THE-POOH ON MANAGEMENT: IN WHICH A VERY IMPORTANT BEAR AND HIS FRIENDS ARE INTRODUCED TO A VERY IMPORTANT SUBJECT (2011).
500. See, e.g., CHARLES SCHULZ, YOU’RE A LEADER, CHARLIE BROWN (2016).
501. See, e.g., JULIET ADAMS, MINDFUL LEADERSHIP FOR DUMMIES (2016).
and creative leadership, emphasizing that a crucial aspect of leadership is fostering creativity in oneself and others. Mueller also highlights that another important component of leadership is mitigating the bias against creativity that she and others have documented in a number of experimental studies. It is possible, though it remains an open question, that practicing mindfulness can overcome the creativity bias and racially discriminative behavior, perhaps in a way similar to how practicing mindfulness can reduce the implicit age/race biases and racially discriminative behavior.

It is well-known that females, minorities, and minority women attorneys are and have been leaving law firms in droves. Much of this exodus is likely because of cultural and structural biases in the practice of law, especially at so-called big law firms. Unfortunately, the pace and scope of cultural and structural reforms in the legal profession has been gradual and limited. The above research suggests how law firm leaders practicing mindfulness may reduce implicit racial bias and racially discriminative behavior.


505. Mueller, supra note 503, at 90.

506. Lueke & Gibson, supra note 320, at 39.

507. Id.


Attorney Kate Mangan advocates that instead of leaving the legal profession, attorneys who feel isolated, lonely, and ostracized may practice self-compassion to help them survive and thrive in a male-centric, and predominantly Caucasian, workplace culture. University of Texas, Austin psychologist and self-compassion expert Kristen Neff defines the three interrelated components of self-compassion to be: “(1) self-kindness, (2) recognition of our common humanity, and (3) mindfulness.” Mangan explains how people can learn rather swiftly to practice significantly more self-compassion; why becoming more self-compassionate tends to lead to change, growth, and learning, instead of laziness, self-indulgence, or self-pity; and how practicing self-compassion leads to more confidence, proactivity, resilience, risk-taking, satisfaction, and social connectedness; while reducing anxiety, depression, fear, suffering, and unhappiness. All of these consequences of practicing self-compassion may repair the currently leaky pipeline and increase diversity in the legal profession by helping attorneys to cope better with problematic and slow-changing law firm cultures. Practicing mindfulness as part of self-compassion complements other policies to increasing attorney diversity, such as diversifying the legal educational pipeline or behavioral design.

B. Mindfulness Improves a Group’s Collective Hormonal Profile

A different way that practicing mindfulness can improve leadership is to reduce the stress hormone cortisol, and in so
doing, improve a group’s performance.523 Whereas previous research demonstrated that “an individual’s hormonal profile can influence the individual’s social standing within a group,”524 more recent research shows that a group’s collective hormonal profile is related to its performance.525 A study where 370 individuals were randomly assigned to work in groups of three to six people found group-level concentrations of cortisol and testosterone predicted a group’s relative standing.526 In particular, groups that had a collective hormonal profile of low cortisol and high testosterone had the highest performance,527 with these results remaining “reliable when controlling personality traits and group-level variability in hormones.”528 These results “support the hypothesis that groups with a biological propensity toward status pursuit (high testosterone) coupled with reduced stress-axis activity (low cortisol) engage in profit-maximizing decision-making.”529 This research “extends the dual-hormone hypothesis to the collective level and provides a neurobiological perspective on the factors that determine who rises to the top across, not just within, social hierarchies.”530 An implication of this research is that leaders of groups can improve the relative performance of their group by practicing mindfulness and encouraging all of their group members to practice mindfulness.

C. Mindfulness Facilitates Reflective Practice and Double-Loop Learning

Another part of being a successful leader is being a successful professional. Part of being a successful professional is being a reflective practitioner. Donald Schon, who was the Ford professor of urban studies and education at the Massachusetts Institute of Technology, analyzed in his book, The Reflective Practitioner: How Professionals Think in Action, how professionals actually solve problems by studying these five professions: architecture,

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524. Id.
525. Id.
526. Id.
527. Id.
528. Id.
529. Id.
530. Id. at 9774, 9777.
engineering, management, psychotherapy, and urban planning. Schon advocated teaching people to be like jazz musicians who can improvise and “think[] on [one’s] feet” and believed that people can continually improve their work through a feedback loop of experience, learning, and practice to become a “reflective practitioner.” Practicing mindfulness helps people become reflective practitioners by helping people stay in the present, focus on their experience, learn from their experience, and practice doing so continually and repeatedly.

Donald Schon in collaboration with Chris Argyris, who was a former Harvard business school professor emeritus of education and organizational behavior, analyzed in their three co-authored books, *Theory in Practice*, *Organizational Learning*, and *Organizational Learning II*, to what extent human reasoning, in addition to behavior, can be the basis for diagnosis and action in individual and organizational learning. They developed a theory of double-loop learning, in contrast with single-loop learning, which entails repeated attempts at solving a problem, without ever changing the attempted solution method or considering alternative possible objectives. The distinction between single-loop learning and double-loop learning is nicely captured by a simple analogy:

A thermostat that automatically turns on the heat whenever the temperature in a room drops below 68 degrees is a good example of single-loop learning. A thermostat that could ask, “Why am I set at 68 degrees?” and then explore whether or not some other temperature might more economically achieve the goal of heating the room would be engaging in double-loop learning.

Although, and ironically because many professionals are good at single-loop learning, those same professionals are not good at double-loop learning. Moreover, some professionals who are bad

532. Id. at 54–55.
537. Argyris, supra note 536, at 100. See also Argyris & Schon, supra note 533, at 18–19.
538. Argyris, supra note 536, at 100.
at double-loop learning “become defensive, screen out criticism, and put the ‘blame’ on anyone and everyone but themselves. In short, their ability to learn shuts down precisely at the moment they need it the most.” \(^{539}\) Importantly, “effective double-loop learning is not simply a function of how people feel. It is a reflection of how they think—that is, the cognitive rules or reasoning they use to design and implement their actions.”\(^{540}\) Many professionals react defensively when experiencing strong feelings of being threatened, embarrassed, guilty, incompetent, ashamed, or vulnerable.\(^{541}\) These defensive reactions can very quickly lead to a doom loop of despair.\(^{542}\)

Argyris believes that “everyone develops a theory of action—a set of rules that individuals use to design and implement their own behavior as well as to understand the behavior of others. Usually, these theories of actions become so taken for granted that people don’t even realize they are using them.”\(^{543}\) Interestingly and paradoxically, people do not behave according to their theories of action.\(^{544}\) Argyris calls how people actually behave their “theory-in-use.”\(^{545}\) Argyris sees people as “unaware of the contradiction between their espoused theory and their theory-in-use, between the way they think they are acting and the way they really act.”\(^{546}\) Argyris concludes the following:

[M]ost theories-in-use rest on the same set of governing values. There seems to be a universal human tendency to design one’s actions consistently according to four basic values:

1. To remain in unilateral control;
2. To maximize “winning” and minimize “losing”;
3. To suppress negative feelings; and
4. To be as “rational” as possible—by which people mean defining clear objectives and evaluating their behavior in terms of whether or not they have achieved them.\(^{547}\)

The above theory in use makes it difficult, if not impossible, for people to learn.\(^{548}\) Argyris advocates teaching people to

\(^{539}\) Id.
\(^{540}\) Id.
\(^{541}\) Id. at 101–03.
\(^{542}\) Id. at 103–04.
\(^{543}\) Id. at 103.
\(^{544}\) Id.
\(^{545}\) Id.
\(^{546}\) Id.
\(^{547}\) Id.
\(^{548}\) Id.
“identify the inconsistencies between their espoused and actual theories of action”\textsuperscript{549} as well as “face up to the fact that they unconsciously design and implement actions that they do not intend”\textsuperscript{550} and “learn how to identify what individuals and groups do to create organizational defenses and how these defenses contribute to an organization’s problems.”\textsuperscript{551} In particular, Argyris recommends teaching people how to go about “collecting valid data, analyzing it carefully, and constantly testing the inferences drawn from the data.”\textsuperscript{552}

An implication of Argyris’ research is that leaders can improve leadership by practicing mindfulness and encouraging all members of their organizations to practice mindfulness. By practicing mindfulness, leaders and members of their organizations can improve their awareness of strong negative emotions, capabilities to not react defensively, and recognition of when their theories in use differ from their theories of action, all of which improve their likelihood of engaging in double-loop learning. Success depends critically on individuals and organizations being able to engage in double-loop learning. Organizations in which leaders and members fail to engage in double-loop learning and adaptation usually will only survive by luck.

\textbf{D. Mindfulness Facilitates Translational Leadership}

Wharton management professor Andrew Carton’s recent and playfully titled article, \textit{I'm Not Mopping the Floors, I'm Putting a Man on the Moon: How NASA Leaders Enhanced the Meaningfulness of Work by Changing the Meaning of Work},\textsuperscript{553} analyzes what President John F. Kennedy said in his memorable “Address at Rice University on the Nation’s Space Effort” (better known as his “We Choose to Go to the Moon” speech)\textsuperscript{554} and what NASA leaders did and said in the 1960s during America’s space race.\textsuperscript{555} President Kennedy’s charismatic, eloquent, powerful, and

\textsuperscript{549} Id. at 106.

\textsuperscript{550} Id.

\textsuperscript{551} Id.

\textsuperscript{552} Id.

\textsuperscript{553} Andrew Carton, \textit{I'm Not Mopping the Floors, I'm Putting a Man on the Moon: How NASA Leaders Enhanced the Meaningfulness of Work by Changing the Meaning of Work}, \textit{ADMIN. SCI. Q.} (2017).

\textsuperscript{554} President John F. Kennedy, Address at Rice University on the Nation’s Space Effort (Sept. 12, 1962) (available at https://er.jsc.nasa.gov/seh/ricetalk.htm [https://perma.cc/Y43T-9ABX]).

\textsuperscript{555} Meaningful Work: What Leaders Can Learn from NASA and the Space Race, KNOWLEDGE@WHARTON, Mar. 16, 2017, http://knowledge.wharton.upenn.edu/article/what-leaders-can-learn-from-
stirring delivery of speechwriter Ted Sorenson’s inspirational rhetoric masterfully reframed “the moonshot as being instrumental for U.S. security reasons.” In the speech, President Kennedy states:

We meet at a college noted for knowledge, in a city noted for progress, in a State noted for strength, and we stand in need of all three, for we meet in an hour of change and challenge, in a decade of hope and fear, in an age of both knowledge and ignorance. The greater our knowledge increases, the greater our ignorance unfolds.

Despite the striking fact that most of the scientists that the world has ever known are alive and working today, despite the fact that this Nation’s own scientific manpower is doubling every 12 years in a rate of growth more than three times that of our population as a whole, despite that, the vast stretches of the unknown and the unanswered and the unfinished still far outstrip our collective comprehension.

Surely the opening vistas of space promise high costs and hardships, as well as high reward.

So it is not surprising that some would have us stay where we are a little longer to rest, to wait. But this city of Houston, this State of Texas, this country of the United States was not built by those who waited and rested and wished to look behind them. This country was conquered by those who moved forward—and so will space.

The exploration of space will go ahead, whether we join in it or not, and it is one of the great adventures of all time, and no nation which expects to be the leader of other nations can expect to stay behind in the race for space.

Those who came before us made certain that this country rode the first waves of the industrial revolutions, the first waves of modern invention, and the first wave of nuclear power, and this generation does not intend to founder in the backwash of the coming age of space. We mean to be a part of it—we mean to lead it. For the eyes of the world now look into space, to the moon and to the planets beyond, and we have vowed that we shall not see it governed by a hostile flag of conquest, but by a banner of freedom and peace. We have vowed that we shall not see space filled with weapons of mass
destruction, but with instruments of knowledge and understanding.

Yet the vows of this Nation can only be fulfilled if we in this Nation are first, and, therefore, we intend to be first. In short, our leadership in science and in industry, our hopes for peace and security, our obligations to ourselves as well as others, all require us to make this effort, to solve these mysteries, to solve them for the good of all men, and to become the world’s leading space-faring nation.

We set sail on this new sea because there is new knowledge to be gained, and new rights to be won, and they must be won and used for the progress of all people. For space science, like nuclear science and all technology, has no conscience of its own. Whether it will become a force for good or ill depends on man, and only if the United States occupies a position of pre-eminence can we help decide whether this new ocean will be a sea of peace or a new terrifying theater of war.

There is no strife, no prejudice, no national conflict in outer space as yet. Its hazards are hostile to us all. Its conquest deserves the best of all mankind, and its opportunity for peaceful cooperation may never come again.557

In probably the most famous paragraph from that well-known speech, President Kennedy states these iconic words:

We choose to go to the moon. We choose to go to the moon in this decade and do the other things, not because they are easy, but because they are hard, because that goal will serve to organize and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win, and the others, too.558

Carton conducted an inductive study to conclude that President Kennedy and NASA leaders succeeded as meaningfulness architects who built cognitive schemas that outlined core connections between employees’ daily work and their organization’s ultimate aspiration.559 Carton’s research redirects leadership research by viewing leaders as architects who create structural blueprint mapping connections between an organization’s ultimate aspirations and everyday work. Carton’s novel idea departs from the more traditional view of leaders as visionaries who showcase an organization’s ultimate

557.  Kennedy, supra note 554.
558.  Id.
559.  See generally Carton, supra note 553.
aspirations.\textsuperscript{560} In Carton’s view, leaders can and should engage in translational leadership that assists employees in transforming their daily work’s meaning from simply many low-level discrete actions to their organization’s ultimate high-level aspiration.\textsuperscript{561} This essentially cognitive type of leadership fosters employees re-construing, redefining, and reframing their everyday work as their organization’s ultimate aspiration.\textsuperscript{562} Practicing mindfulness enables leaders to become more aware of how to help employees “mentally assemble” the strong connections between their daily work and their organization’s ultimate aspiration.\textsuperscript{563}

Carton’s idea of leaders as cognitive architects of meaningfulness is related to another idea known as thinking architecture that behavioral economists Shlomo Benartzi and John Payne define as “a structured process that allows us to break down a complex problem . . . into a series of manageable thinking steps, so as to improve outcomes.”\textsuperscript{564} Cognitive leaders essentially constitute, craft, and create thinking architecture that employees can utilize to build memorable, robust, and sustainable connections between their concrete, day-to-day, immediate, short-term tasks and their organization’s abstract, long-term, timeless, ultimate aspiration. In so doing, cognitive leaders are meaningfulness connection entrepreneurs.

\textit{E. Mindfulness Facilitates Adaptive Leadership}

In a Supreme Court opinion, Justice William Rehnquist wrote this about private litigation alleging securities fraud violating § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission: “[W]e deal with a judicial oak which has grown from little more than a legislative acorn.”\textsuperscript{565} This quote provides a striking metaphor for and visual imagery of how things can often change over time. Sometimes the change is predictable as with the development of a tiny acorn into a mighty oak tree. Other times, the change is unpredictable as with the many plans that people make and then have to revise. Paul “Bear” Bryant, the legendary head college football coach who during a twenty-five year tenure at the University of Alabama led

\footnotesize{\begin{itemize}
  \item \textsuperscript{560} \textit{Id.} at 30–31
  \item \textsuperscript{561} \textit{Id.} at 33
  \item \textsuperscript{562} \textit{Id.} at 30
  \item \textsuperscript{563} \textit{Id.}
  \item \textsuperscript{564} Shlomo Benartzi with Roger Lewin, \textit{Thinking Smarter: Seven Steps to Your Fulfilling Retirement . . . and Life} 5 (2015).
  \item \textsuperscript{565} Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 737 (1974) (holding that only those directly suffering losses from the actual purchase or sale of securities have standing to sue under the federal securities laws).}
\end{itemize}}
his teams to thirteen conference titles and six national championships, famously said: “Have a plan. Follow the plan, and you’ll be surprised how successful you can be. Most people don’t have a plan. That’s why it’s easy to beat most folks.”566 Michael Gerard “Mike” Tyson, the controversial boxer who successfully defended the world heavyweight championship nine times, notoriously stated: “Everybody has a plan ‘til [sic] they get punched in the mouth.”567 Leaders (and others) who succeed not only plan; they also plan to adapt,568 in light of unforeseen circumstances or conditions and unplanned changes or developments.

Leadership scholar Ronald Heifetz569 introduced the concept of adaptive leadership, defined as “the practice of mobilizing people to tackle tough challenges and thrive.”570 Thriving entails developing new capabilities and strategies to address environmental changes and realize strategic vision and goals. Adaptive leadership views the most common failure of leadership as mistaking adaptive challenges for technical challenges.571 Adaptive leadership contrasts technical challenges with adaptive challenges.572 Adaptive leadership theory also incorporates ethics into leadership.573

Technical challenges are challenges that are easily identified, involve clearly defined problems with known solutions that are clear to implement, and can often be solved by an expert or authority. Examples of technical challenges are taking medication to lower blood pressure, implementing electronic dispensing and ordering of hospital medications to lower drug interactions and mistakes, and raising the penalties for drunk driving to reduce car accidents involving drunk drivers. Adaptive challenges are challenges that are difficult to identify (and so,

easy to deny), involve unclearly defined problems and unclearly defined solutions that are not clear to implement, and require discovery or experimentation by many people to learn the solution. Examples of adaptive challenges are changing lifestyles to eat healthy, exercise more, and lower stress; encouraging nurses and pharmacists to question and, if necessary, challenge dangerous or unclear prescriptions; and raising public awareness concerning the dangers and consequences of drunk driving, targeting, particularly with teenagers.

Management scholar Jeremy Hunter and social entrepreneur Michael Chaskalson propose that mindfulness provides an operational and potent way for leaders to respond to adaptive challenges because adaptive challenges are difficult and hence stressful, often require complex coordination with others and so quality relationships matter, and call for leaders to consciously avoid habitual reactions and deal with a changing reality in creative, novel, and nuanced ways. Practicing mindfulness enables leaders to effectively manage their stress, manage their emotional reactions and interpersonal skills, and manage their perceptual skills and innovation abilities. Hunter and Chaskalson believe

[A] critical skill for adaptive leaders is the capacity to be mindful—to be present and aware of themselves, others, and the world around them; to recognize in real time their own perceptions (and their potential biases), their emotional reactions, and the actions they need to take to address current realities more effectively.

Hunter and Chaskalson observe that mindfulness training offers leaders real-world ways to improve their attention and awareness, and in turn develop the possibility of “adaptive action and self-management.” Hunter and Chaskalson explain how mindfulness addresses these interrelated problems that interfere with adaptive leadership: the pervasiveness of

574. DRUCKER SCH. OF MGMT., Jeremy Hunter, Faculty Page, CLAREMONT GRADUATE UNIV., http://drucker.cgu.edu/faculty/jeremy-hunter/ [https://perma.cc/38AB-WJBP].
577. Id.
578. Id.
579. Id.
580. Id. at 197–98.
mindlessness, automaticity, and survival instincts. Hunter and Chaskalson discuss recent neuroscience studies that suggest how mindfulness training can help people manage their stress, manage reactive emotions, improve attention and working memory, perceive “reality beyond one’s blinders,” cultivate empathy, make better decisions, and be more creative and innovative. Hunter and Chaskalson suggest mindfulness training is effective via these three principal mechanisms: changing what minds process, changing how minds process, and changing views or perspectives about what minds process.

Leadership scholars Megan Reitz, Chaskalson, Sharon Oliver, and Lee Waller conducted the first study of a multi-session mindfulness training program involving (business) leaders. They found in a sample of fifty-seven senior business leaders, taking an eight-week mindfulness training program, without accounting for how much time participants engaged in formal mindfulness practice at home, significantly increased self-reported resilience and abilities to describe internal experiences. The more time participants engaged in formal mindfulness practice at home, the higher increases in self-reported resilience, self-reported collaboration, self-reported agility in complexity, an overall mindfulness measure, and empathetic tendencies of perspective taking (ability to adopt others’ psychological viewpoints) and fantasy (ability to transpose oneself

581. *Id.* at 199–202.
582. *Id.* at 202–04.
583. *Id.* at 204–05.
584. *Id.* at 205.
585. *Id.* at 205–06.
586. *Id.* at 206–07.
587. *Id.* at 207.
588. *Id.* at 207–08.
594. *Id.* at 13.
imaginatively into others’ feelings) in addition to decreases in personal distress.\

Reitz et al. propose the following theory of mindful leadership: practicing mindfulness develops three meta-capacities: metacognition, curiosity, and allowing. These three meta-capacities in turn help develop these five cognitive and emotional skills: emotional regulation, perspective taking, empathy, focus, and adaptability. These five cognitive and emotional skills in turn lead to improved collaboration, resilience, and capacity to lead in complexity.

In the language of the real options perspective to mindfulness discussed earlier, practicing mindfulness provides a portfolio of compound or nested options (meaning options on options) to develop the meta-capacities of metacognition, curiosity, and allowing; that in turn deliver options to develop the five cognitive and emotional skills of emotional regulation, perspective taking, empathy, focus, and adaptability; that in turn make available options to improve the three capacities of collaboration, resilience, and leading in complexity. All of these options are more valuable when leaders face greater environmental volatility. It is a well-known result in options theory that a portfolio of options on assets is more valuable than an option on a portfolio of assets.

In the Reitz et al. theory of mindful leadership, practicing mindfulness provides leaders a portfolio of three compound or nested options, each of which provides another portfolio of five compound or nested options, each which provides a final portfolio of three options. The importance of mindfulness providing portfolios of options rather than options on portfolios is the greater flexibility and hence value in developing those three meta-capacities, five cognitive and emotional skills, and three leadership capacities that a leader decides is appropriate for the environment she faces. For different environmental conditions, or as environmental conditions change, a leader can make different choices about which of her many real options to develop different meta-capacities, cognitive and emotional skills, and

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595. Id. at 13–14.
596. Id. at 21 fig. 2.
597. Id. at 16.
598. Id. at 17.
599. See discussion supra Part II, notes 459, 460, 463, and accompanying text.
600. See, e.g., Richard M. Bookstaber, Option Pricing and Investment Strategies 26 (3d ed. 1991) (“Property 13: The price of a portfolio of options will be at least as great as an option on a portfolio.”).
601. See supra notes 593–598 and accompanying text.
602. Id.
leadership capacities she can exercise. Different leadership strategies can be viewed as different portfolios of real options.\textsuperscript{603}

Based on the findings of their study, Reitz and Chaskalson offer seven recommendations for how companies can successfully design a mindfulness program for leadership.\textsuperscript{604} First, those interested to do so should develop their own mindfulness practice.\textsuperscript{605} Second, invite a mindfulness trainer with considerable experience in the corporate context to speak with interested employees in a “taster session.”\textsuperscript{606} Third, provide a mindfulness program with sustained training over a period of time, e.g. the well-known eight-week mindfulness-based stress reduction course.\textsuperscript{607} Fourth, provide a private and quiet space for employees to practice mindfulness.\textsuperscript{608} Fifth, encourage and facilitate employees practicing together.\textsuperscript{609} Sixth, begin corporate meetings by having employees take a minute of mindfulness, e.g. by bringing their attention to their breaths by counting them.\textsuperscript{610} Seventh, role model mindfulness practice, talk about mindfulness practice, and promote employees who practice mindfulness.\textsuperscript{611} Interested legal organizations, including law firms, law schools, and bar associations, can adapt each of these suggestions to legal practice, legal education, and continuing legal education.

\textbf{F. Mindfulness as Experiential Education}

Reitz and Chaskalson emphasize the findings of their study, highlighting the importance of at least ten minutes of formal mindfulness practice to achieve the benefits of resilience, the capacity for collaboration, and the ability to lead in complex conditions.\textsuperscript{612} I personally learned the importance of having students engage in actual formal experiential practice. In the autumn of 2009, professor Dan Kahan\textsuperscript{613} and I co-taught a Yale

\begin{itemize}
  \item \textsuperscript{603} See, e.g., Timothy A. Luehrman, \textit{Strategy as a Portfolio of Real Options}, HARV. BUS. REV., Sept.–Oct. 1998, at 89.
  \item \textsuperscript{604} Reitz et al., \textit{supra} note 593, at 24.
  \item \textsuperscript{605} Id.
  \item \textsuperscript{606} Id.
  \item \textsuperscript{607} Id.
  \item \textsuperscript{608} Id.
  \item \textsuperscript{609} Id.
  \item \textsuperscript{610} Id.
  \item \textsuperscript{611} Id.
  \item \textsuperscript{612} Megan Reitz & Michael Chaskalson, \textit{Mindfulness Works but Only If You Work at It}, HARV. BUS. REV., Nov. 4, 2016, https://hbr.org/2016/11/mindfulness-works-but-only-if-you-work-at-it; Reitz et al., \textit{supra} note 593, at 13.
  \item \textsuperscript{613} Dan Kahan, Faculty Page, YALE LAW SCH., https://www.law.yale.edu/dan-m-kahan [https://perma.cc/PBL9-RDRX].
\end{itemize}
law school seminar titled neuroscience and law. At that time, there was no law school course casebook about law and neuroscience as there now is, so we put together a weekly reading list of law review articles and peer-reviewed journal articles. The topic of the last week of our seminar was the neuroscience of well-being, including a number of neuroscience studies about various benefits of mindfulness. Some of our students expressed concern about proposals that advocated teaching mindfulness in elementary school. Their concerns were due to neuroscience research findings that mindfulness changes people’s brain structures and functioning. We answered that learning also changes people’s brain structures and functioning. They were not persuaded by our analogy. In fact, anything that we do changes our brains, such as closing our eyes, practicing the piano, laying bricks, or being exposed for a single twenty-minute


617. See, e.g., Christina Congleton et al., Mindfulness Can Literally Change Your Brain, HARV. BUS. REV. (Jan. 8, 2015), https://hbr.org/2015/01/mindfulness-can-literally-change-your-brain (discussing some of these neuroscience studies and their implications for the business world); Britta K. Hözel et al., Mindfulness Practice Leads to Increases in Regional Brain Gray Matter Density, 191 PSYCHIATRY RES.: NEUROIMAGING 36, 36–42 (2011) (presenting study details); Rafał Marciniak et al., Effect of Meditation on Cognitive Functions in Context of Aging and Neurodegenerative Diseases, 8 FRONTIERS BEHAV. NEUROSCI. Art. 17, at 1, 4, 5 tbl.1 (2014) (discussing seven MRI studies finding brain structure changes associated with meditation).

618. See, e.g., Bogdan Draganaki et al., Temporal and Spatial Dynamics of Brain Structure Changes during Extensive Learning, 26 J. NEUROSCI. 6314, 6314–16 (2006) (finding that learning a large body of highly abstract information was associated with increased gray matter in specific brain areas of medical students); Johan Mårtensson et al., Growth of Language-related Brain Areas after Foreign Language Learning, 63 NEUROIMAGE 240, 240 (2012) (finding structural changes in brain regions of interpreters during three months of intensively learning a foreign language); Alexander Schlegel et al., The Artist Emerges: Visual Art Learning Alters Neural Structure and Function, 105 NEUROIMAGE 440, 440 (2015) (finding that learning artistic skills in a three-month introductory course in drawing or painting changed students’ brain structures and functioning and boosted creativity).

619. Rosenbaum, supra note 373, at 55–56.
session in a tanning salon to ultraviolet rays.\textsuperscript{620}

Our students’ concerns exemplify a more general backlash towards mainstreaming and marketing a secularized version of mindfulness that is decoupled from its ethical context and Buddhist sources.\textsuperscript{621} There also are and have been for a while various concerns over the choice of control groups, research protocols, sample sizes, and other details in some of the neuroscience studies about mindfulness.\textsuperscript{622} Psychiatrist Sally Satel and psychologist Scott O. Lilienfeld critique a “neurocentric” view of the human mind that reduces subjective experiences to biology alone.\textsuperscript{623}

Psychologists Miguel Farias and Catherine Wikholm critically examine research about mindfulness and meditation, cautioning that both practices may have unexpected consequences for some people.\textsuperscript{624} Risks of practicing mindfulness include triggering untreated traumas from the past and possible ineffectiveness with more acute mental health conditions.\textsuperscript{625} There are several potential costs of increased trait mindfulness including problems with avoidance, creativity, critical thinking, groupthink, learning, meaning, and motivation.\textsuperscript{626} Several laboratory experimental studies found that mindfulness increased the

\textsuperscript{620}Id., at 59 n. 6. See also Cynthia R. Harrington et al., Activation of the Mesolimbic Reward Pathway with Exposure to Ultraviolet Radiation (UVR) vs. Sham UVR in Frequent Tanners, 17 ADDICTION BIOLOGY 680 (2012).


\textsuperscript{625}MARK WILLIAMS & DANNY PENMAN, MINDFULNESS: AN EIGHT-WEEK PLAN FOR FINDING PEACE IN A FRANTIC WORLD (2012).

susceptibility to false recollection in the form of memory distortions.\(^{627}\) Although research finds that mindfulness improves individual decision-making and performance in face-to-face negotiations, two experimental studies found that induced mindfulness detrimentally impacted computer-mediated group decision-making performance and dyads negotiation, though mindfulness increased attention to interpersonal and social relations.\(^{628}\) One recent experimental study found that a five-minute mindfulness exercise was insufficient for building empathetic responding and even decreased empathy among people with narcissistic traits.\(^{629}\)

A 1992 study found that after participating in a mindfulness-based meditation retreat, most reported positive benefits, while seventeen reported at least one adverse effect, and two reported suffering profound adverse effects, such as loss of motivation and panic attacks.\(^{630}\) A 2009 article summarized adverse effects documented in twelve published case studies and reviews of mindfulness meditation.\(^{631}\) The authors of that article classified these adverse effects into three categories: mental health,\(^{632}\) such as anxiety, hallucinations, and temporary depersonalization; physical health,\(^{633}\) such as double vision, pain, and risk of seizures; and spiritual health, in particular, religious delusions.\(^{634}\) A 2012 article warned there is little research about who may be vulnerable to potential adverse effects of mindfulness meditation resulting from the possible surfacing of long-held body tension, critical or judgmental thoughts, and grief.\(^{635}\)

\(^{627}\) Eyal Rosenstreich, Mindfulness and False-Memories: The Impact of Mindfulness Practice on the DRM Paradigm, 150 J. PSYCHOL. 58 (2016); Brent M. Wilson et al., Increased False-Memory Susceptibility After Mindfulness Meditation, 26 PSYCHOL. SCI. 1567 (2015).

\(^{628}\) Johannes Grapendorf et al., Mindfulness is Detrimental to Performance in Computer-Mediated Interdependent Tasks, 74 COMPUTERS HUM. BEHAV. 1 (2017).

\(^{629}\) Anna Ridderinkhof et al., Does Mindfulness Meditation Increase Empathy? An Experiment, 16 SELF & IDENTITY 251, 260, 264 (2017).


\(^{632}\) Id. at 21, 23–25.

\(^{633}\) Id. at 24–25.

\(^{634}\) Id. at 25–26; see also Deane H. Shapiro, Jr., Examining the Content and Context of Meditation: A Challenge for Psychology in the Areas of Stress Management, Psychotherapy, and Religion/Values, 34 J. HUMANISTIC PSYCHOL. 101 (1994); Deane H. Shapiro, Jr., A Preliminary Study of Long-Term Meditators: Goals, Effects, Religious Orientations, Cognitions, 24 J. TRANSPERSONAL PSYCHOL. 23 (1992).

\(^{635}\) Patricia L. Dobkin et al., For Whom May Participation in Mindfulness-Based Stress Reduction Program be Contraindicated? 3 MINDFULNESS 44, 47 (2012).
An exploratory study, in which organizational behavior students attended a lecture about mindful awareness including a brief meditation exercise, found no statistically significant change in students’ mindful awareness, as measured by a self-reported questionnaire. This preliminary research suggests that effortful, rigorous, and systematic practice may be required to yield statistically significant changes in mindfulness. Practicing mindfulness is not a panacea for all ailments and ills. Practicing mindfulness is a life-long way of living that some people will find easy and natural, while others will find hard and unnatural.

I only realized about eleven months later in October 2010, during the Mindful Lawyer Conference, that although Dan and I had assigned our students to read neuroscience articles about mindfulness (meditation), we did not actually lead and help our students to personally experience mindfulness in our seminar. I can only wonder now if our students would have reacted differently to proposals for teaching mindfulness if they had even very briefly experienced practicing mindfulness. In every class since then in which I have spoken about mindfulness, I have played at least one brief audio of a guided mindfulness practice to allow students to experience mindfulness for themselves and in real-time. After experiencing even just such a brief taste of mindfulness, many students express interest about and receptiveness towards learning more about mindfulness.

University of Pittsburgh School of Law professor Teresa Kissane Brostoff explains how practicing mindfulness is a form of experiential learning, that when “learned and paired with essential skill-building such as deep listening, reflective and compassionate negotiation, and positive interpersonal professional interactions” satisfies the new ABA requirement for experiential learning. South Texas College of Law Houston professor Katerina P. Lewinbuk and law student Christy Gilbert explain in detail how a law school mindfulness-based skills course

637. Id. at 150, 154. See also Jo Ann Heydenfeldt et al., Cultivating Mind Fitness Through Mindfulness Training: Applied Neuroscience, 50 PERFORMANCE IMPROVEMENT J. 21, 21, 24 (2011) (same).
640. Id. at 162.
can benefit law students and provide samples of such in-class exercises as client interviews and mindful mediation. Ohio State Moritz College of Law professor Katrina June Lee recommends that law schools link mindfulness training and legal technology education to help law students become more balanced, more compassionate, and more empathetic. University of New Mexico Law School professor Nathalie Martin proposes incorporating mindfulness, professional identity, and emotional intelligence into the first year law school curriculum. Professor Martin has written a wonderful book that is based on such a course and illustrates how mindfulness, resilience, emotional intelligence, empathy, cultural competence, and creativity are “tools to deal with a challenging profession that could be doing so much more to make the world a better place, causing transforming one lawyer at a time, and not from normal to depressed and alcoholic but from citizen and child to STEWARD OF SOCIETY’S potential.”

V. CONCLUSION

There is now little empirical or experimental research about how practicing mindfulness affects law students, lawyers, or law professors. This Article presented some of the already-substantial and still-mushrooming body of empirical, experimental, and theoretical research about how practicing mindfulness affects people who are not in the legal profession. Practicing mindfulness appears to have numerous benefits and some genuine risks for most people who are not law students, lawyers, or law professors.

Based upon this existing, already-voluminous and yet ever-growing research about how practicing mindfulness affects non-lawyers, this Article makes three recommendations. First, this Article advocates the following research agenda for

642. Id. at 49–51, 53–63.
643. Id. at 51–52, 64–80.
646. See generally MARTIN, supra note 14.
647. See supra Part II.
mindfulness practice by law students, lawyers, and law professors. Interdisciplinary teams of law professors, lawyers, psychologists, and neuroscientists can and should conduct waitlist-controlled research studies to measure the short-term and long-term impact of brief and sustained mindfulness training program on law students from a number of law schools that differ in law school culture, demographics, diversity, location, ranking, and size. This research can and should measure pre- and post- levels of such variables as academic performance, adaptability, agility in complexity, allowing, anxiety, attention, bar passage, character development, charitable donation behavior, collaborative problem-solving, cognitive control, compassion, cortisol, curiosity, depression, empathy, decision-making, emotional intelligence, emotional regulation, ethical reasoning, focus, metacognition, motivation, mood, perspective taking, pro-social behavior, resilience, sleep, stress, subjective well-being, substance use, values, and working memory. This research can and should also track cohorts of law students into their legal practice careers. The author of this Article, law professor Debra Austin, legal profession consultants with master’s degrees in applied positive psychology, Martha Knudson and Anne Brafford, psychology and neuroscience professor Tor Wager, and other colleagues are applying to fund such research. Similar research can and should also study attorneys and law professors at organizations that differ in culture, demographics, diversity, location, doctrinal areas, and size. Finally, the above proposed research can and should include such technologically-mediated mindfulness extensions as biofeedback, mobile apps, social networking, embodied experiences, and video games.

My own personal experience and other anecdotal evidence from law students, lawyers and law professors suggests that at

650. Anne Brafford, supra note 344.
651. COGNITIVE AND AFFECTIVE NEUROSCIENCE LAB, Tor Wager, Faculty Page, UNIV. OF COLO., BOULDER, http://wagerlab.colorado.edu/people [https://perma.cc/BA6N-WY4Z].
653. Id. at 190.
654. Id. at 190–91.
655. Id. at 191–92.
656. Id. at 192–93. See also Robin Pogrebin, In Walden Video Game, the Challenge is Stillness, N.Y. TIMES (Feb. 25, 2017), at A1; Walden, a Game, USC GAME INNOVATION LAB, http://waldengame.com/ [https://perma.cc/RT59-PGGF].
least some of the positive impacts of practicing mindfulness found in studies involving people who are not in the legal profession also hold for law students, lawyers, and law professors. If even some of these positive impacts are not found to hold for many law students, lawyers, and law professors, then that would raise a number of additional research questions, including these: Do people who choose to enter the legal profession differ from the population at large in some ways that alter the beneficial impacts of mindfulness? Does legal education change the brain structure and/or the brain function of law students and law professors in some ways that alter or nullify the beneficial impacts of mindfulness, through, for example, the language of law school? Does legal practice change brain structure and brain function in some ways that alter the beneficial impacts of mindfulness, through, for example, the chronic stress of lawyering? Does learning to think like a lawyer change brain structure and brain function in some ways that alter the beneficial impacts of mindfulness, through, for example, law students and lawyers learning to become primarily or exclusively analytical, overly argumentative, excessively critical of self and others, hyper-vigilant, compulsively obsessively detail-oriented, perfectionist, too literal, and unbalanced? Do law students, lawyers, and law professors who are defensive pessimists, utilizing anxiety to motivate themselves, benefit less from on-the-spot mindfulness meditation? Does the well-known and persistent innumeracy among some law students and lawyers possibly alter how mindfulness practice affects lawyers? Former First Lady Michelle Obama, while speaking at the National Science Foundation, described why she chose law to be her career by saying: “I know for me, I’m a lawyer because I was bad at [science and math]. All lawyers in the room, you know it’s

657. MERTZ, supra note 422.
659. Felder, supra note 425.
660. HAFENBRACK, supra note 23, at 126.
663. Arden Rowell & Jessica Bregant, Numeracy and Legal Decision Making, 46 ARIZ. ST. L.J. 191 (2014) (exploring how numeracy can affect students’ susceptibility to cognitive bias and the correlation between numeracy and legal decision-making).
true. We can’t add and subtract, so we argue."\textsuperscript{664}

If there are differences in the benefits and risks of mindfulness between those in the legal profession and those who are not, do these differences vary by such demographic variables as birth order, educational background, ethnicity, family size, gender, income, location, race, or sexual orientation and if so, how? Many lawyers and non-lawyers believe in a type of lawyer exceptionalism in the sense that lawyers think in special ways that differ from how non-lawyers think. Some law professors firmly believe, without any supporting empirical basis, that the only pedagogically effective way to teach all doctrinal courses in law school is the Socratic dialogue method of instruction. If and when pressed as to why they have this persistent belief, some law professors will respond that the practice of law entails a special kind of analytical, deliberative, dispassionate, and logical thinking most non-lawyers are not equipped to do because of tendencies non-lawyers have to engage in emotional, fallacious, illogical, and sentimental reasoning.

Indeed, many law professors often repeat a common refrain stating the purpose of law school is to teach law students how to think like lawyers. Interestingly, medical school professors typically do not say the purpose of medical school is to teach medical students how to think like physicians. Similarly, business school professors typically do not say the purpose of business school is to teach business students how to think like businesspeople. Likewise, nursing school professors usually do not say the purpose of nursing school is to teach nursing students how to think like nurses. Unsurprisingly, veterinary school professors typically do not say the purpose of veterinary school is to teach veterinary students how to think like veterinarians. In fact, there is not another professional school whose professors would typically say the purpose of their school is to teach their students how to think like those in their profession. Instead, most professional school professors would most likely say the purpose of their professional school is to teach their students to be or become professionals. In other professions, there is teaching and research about non-cognitive aspects of being a successful professional. For example, there is a time-honored tradition about physicians developing calm, compassionate, empathetic, humane, and supportive “bedside manner” that might be described better as interpersonal dynamics.\textsuperscript{665} So in addition to helping law students

\textsuperscript{664} Michelle Obama, Remarks by the First Lady at the National Science Foundation Family-Friendly Policy Rollout (Sept. 26, 2011).
\textsuperscript{665} See, e.g., Barry D. Silverman, Physician Behavior and Bedside Manners: The
learn to think like a lawyer, law professors also should help law students learn to feel like a lawyer. The negative and positive feelings that lawyers have self-reported in surveys encompass a full spectrum of emotions, including anger, anxiety, boredom, exhilaration, fear, hate, love, relief, and terror.666

Does the belief summarized by the mantra that law professors and law schools teach law students “how to think like a lawyer” explain why so many law professors, law students, and lawyers view the practice of law as predominantly, if not exclusively, a cognitive profession? Cognitive competence is certainly vital in legal practice and many other areas, such as executive-branch decision-making.667 Yet, teaching law students only “how to think like a lawyer” and excluding discussing “how to feel like a lawyer” risks crowding out law students developing active listening, compassion, effective communication, emotional intelligence, empathy, humanity, and humility. The current sad landscape of law practice has many clients fearing, and some even hating, their lawyers and the whole legal system. Many non-lawyers find the American legal system intimidating and lawyers, including their own, to be arrogant, condescending, egotistical, impersonal, self-important, and uncaring jerks. Practicing mindfulness helps lawyers to mitigate and reduce these disconcerting, offensive, and undesirable occupational tendencies and traits. The practice of mindfulness can also help lawyers realize the paralyzing confusion and overpowering panic that many non-lawyers feel towards the American legal system. Most Americans only find themselves parties in our legal system if they caused and/or suffered harm, injury, loss, and/or legal wrong. Those who have chosen voluntarily to avail themselves of the American legal system often feel a loss of control and the odds to be stacked against them in terms of their inexperience and unfamiliarity with a bureaucratic, impersonal, and scary legal system. Others are often involuntarily dragged into our bewildering, byzantine, and complicated legal system.

People who sue or are being sued often feel anger, fear, frustration, humiliation, and loss of control during and from the litigation process or the underlying situation that precipitated a

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Parties in lawsuits often feel their lawyers are more interested in litigation strategy than how bewildering, frightening, and stressful being a party in a lawsuit can be. Businesspeople who hire transactional attorneys often feel their lawyers say no, way too often, about apparently profitable business decisions and are also too cautious about potentially rewarding opportunities when those lawyers play the roles of gatekeepers and managers of legal, reputational, and financial risks. Non-lawyers find legalese to be an impenetrably dense foreign language. Many non-lawyers view the law and its many legal procedures, rules, and regulations as constricting, burdensome, and stifling technicalities. Lawyers who practice mindfulness can become more aware of how their clients feel in-the-moment and how they as both lawyers and humans can help their clients more successfully navigate the inherent complexities and uncertainties of litigation and negotiations.

To the uninitiated, legal process appears arcane and mysterious. Lawyers are often advisors, counselors, decision-recommenders, and problem-solvers for their clients. Many lawyers lament about how law used to be a noble, respected profession and now is just another profit-driven business. The billable hour model of law firm compensation creates perverse incentives for lawyers to unethically drag out and pad legal billing. Empirical studies find putting a price on time can instigate impatience during unpaid time and in so doing impair people's ability to enjoy happiness from pleasurable experiences. Related research finds that how people choose to spend time impacts their happiness.

For economic reasons, modern law firms choose to have as their clients, businesses and wealthy individuals. Derek Bok, a former Harvard University President and past Harvard law school dean famously commented that “[t]here is far too much law for those

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669. Marjorie Corman Aabon, Client Science: Advice for Lawyers on Counseling Clients Through Bad News and Other Legal Realities (2012).
who can afford it and far too little for those who cannot." There is an excess supply of lawyers for corporate America and no shortage of lawyers for those who can afford expensive legal representation. It should not be surprising that markets for legal services work well for those with money and not so much for those without money. Many Americans feel that laws, firms, and corporate cultures more generally, privilege accounting profits, economic efficiency, employee productivity, stock market value, and other financial measures over fairness, equality, equity, justice, people, and human dignity. Yet, dignity is crucial to resolving conflicts. Practicing mindfulness can help lawyers become more aware of the crucial role that dignity plays in people’s lives and their interpersonal conflicts.

People hire lawyers to do many things that at least appear to require legal knowledge and expertise. Practicing mindfulness can help lawyers become more aware of how to succeed in the various challenging, demanding, and stressful roles that lawyers take on to serve their clients. My colleague, Violeta Chapin, describes at least these three legal and extra-legal roles that many lawyers often take on at some point during their careers: social worker, movement builder, and warrior. Mindfulness can help lawyers appreciate when and which role to play and how to do so effectively for their clients. My colleague, Christopher McKee, points out how mindfulness can help lawyers to sustain their passion and practice when tackling often challenging roles in the face of difficult obstacles and possible burnout.

Second, this Article advocates that law students, lawyers, and law professors try practicing mindfulness to learn if doing so improves their legal (and personal) decision-making, ethics, and leadership. Ideally, parents and societies will one day teach children in daycare and elementary schools about mindfulness and then continue teaching adolescents in middle and high schools.

675. See generally DONNA HICKS, DIGNITY: ITS ESSENTIAL ROLE IN RESOLVING CONFLICTS (2013).
676. COLO. LAW, Violeta Chapin, Faculty Page, UNIV. OF COLO. BOULDER, http://lawweb.colorado.edu/profiles/profile.jsp?id=373 [https://perma.cc/CBE6-P6Y3].
677. COLO. LAW, Christopher McKee, Faculty Page, UNIV. OF COLO. BOULDER, http://lawweb.colorado.edu/profiles/profile.jsp?id=378 [https://perma.cc/JTV5-CBKE].
678. For example, MindUP has already started teaching children the importance of mindfulness. GOLDIE HAWN, 10 MINDFUL MINUTES: GIVING OUR CHILDREN—AND OURSELVES—THE SOCIAL AND EMOTIONAL SKILLS TO REDUCE STRESS AND ANXIETY FOR HEALTHIER, HAPPY LIVES (2012); THE HAWN FOUND.: MindUP™, http://thehawnfoundation.org/mindup/.
more in-depth about mindfulness. Until that day and possibly even after then, students in colleges, professional schools, and continuing professional education programs can and should try learning about how to apply mindfulness in their particular areas of specialization and professional decision-making domains.

Third, this Article advocates that law schools, law firms, local, state, and national bar associations, and other legal organizations try offering voluntary mindfulness training and supporting mindfulness practices to see if doing so improves legal decision-making, ethics, and leadership. Practicing mindfulness offers lawyers an empirically-validated, potentially sustainable process to improve their decision-making, ethical behavior, and leadership. Doing so can improve the lives of lawyers, their clients, and the public. Because many lawyers also serve as the gatekeepers to public policy in America and other countries, practicing mindfulness by lawyers may convince those lawyers to also advocate and promulgate public policies that encourage more practice of mindfulness in America and other countries.

Mindfulness is an experience that anybody can have, decide for themselves if mindfulness is right for them, and if so, when, where, and how to practice mindfulness. This Article simply presents a large body of empirical and experimental evidence concerning the many benefits and some risks of practicing mindfulness, and raises the question of whether these findings apply to law students, law professors, and lawyers. This Article also considered multiple frameworks, theories, and models of how and why mindfulness has the benefits or promises and the risks or perils that it does.


681. See, e.g., Debra S. Austin, Positive Legal Education, 77 MD. L. REV. (forthcoming) (suggesting that mindfulness can help with heal lawyers and law students who suffer from depression and anxiety associated with the practice and study of law).


683. See generally Huang, supra note 354.
