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META-MINDFULNESS: A NEW HOPE

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Thanks to Shari Motro for a very helpful conversation in which we thought through together the core of this Article and the interrelationships among the sections of this Article.

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ABSTRACT

This Essay starts by tracing its humble origins to an earlier, related and unique law review article, namely, *Tiger Cub Strikes Back: Memoirs of an Ex-Child Prodigy About Legal Education and Parenting*. This Essay describes various professional responses to *Tiger Cub Strikes Back*, provides an update of some developments in research about parenting and legal education since *Tiger Cub Strikes Back*, and recounts a few personal stories about mindfulness and related to being an ex-child prodigy. This Essay then analyzes meta-mindfulness, defined as mindfulness about mindfulness. This Essay discusses how mindfulness about mindfulness can help facilitate the positive transformation of law students, personally and professionally. That discussion includes feedback by three students, one in each of these courses: torts, law and economics, and legal ethics and professionalism. This Essay concludes by considering meta-mindfulness as hope.

## INTRODUCTION: TIGER CUB ORIGINS

I wrote in November 2011 the first draft of a unique law review article titled *Tiger Cub Strikes Back: Memoirs of an Ex-Child Prodigy About Legal Education and Parenting*. The article was published in volume 1 of the anonymously peer-refereed British Journal of American Legal Studies at pages 297-347 [henceforth, *Tiger Cub*].<sup>1</sup> Debra Cassens Weiss, a senior online writer on the staff of the American Bar Association Journal wrote a story with a headline that included the phrase “tiger cub law prof.”<sup>2</sup> Upon my now meeting other law professors for the first time, they often introduce themselves by apologizing for being unfamiliar with any of my research, yet knowing about, reading, and enjoying *Tiger Cub*. More people have downloaded and also more people have viewed *Tiger Cub* than any one of my over fifty other publications about behavioral economics, business law, applied real options theory, corporate finance, economic theory, employment discrimination, happiness economics, law and economics, law in popular culture, law practice, legal education, legal ethics, mathematical economics, mindfulness, neuroeconomics, positive psychology, and torts.

Many *Tiger Cub* readers have said that reading it made them laugh out loud and some of the funny stories resonated with them, in at least one, if not more, of their various roles as child, ex-child, parent, law student, law professor, lawyer, or carbon-based life form<sup>3</sup> (as opposed to a silicon-based life form, such as the fictional creature the Horta from the planet Janus VI in the first season episode, *The Devil in the Dark*, of the original science fiction television series *Star Trek*<sup>4</sup>). Amy Chua,<sup>5</sup> who is the John M. Duff, Jr. Professor of Law at Yale Law School<sup>6</sup> and the author of the best-selling, controversial book<sup>7</sup> that partially inspired the title and writing of *Tiger Cub*, emailed that she found *Tiger Cub* to be “moving, insightful -- and *funny!*”<sup>8</sup>

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<sup>1</sup> Peter H. Huang, *Tiger Cub Strikes Back: Memoirs of an Ex-Child Prodigy About Legal Education and Parenting*, 1 BRIT. J. AM. LEGAL STUD. 297 (2012).

<sup>2</sup> See, e.g., Debra Cassens Weiss, *'Tiger Cub' Law Prof Says Parents and Schools Should Teach More About Emotional Intelligence*, Nov. 21, 2011, 11:30 a.m. CST, A.B.A. J.L. NEWS NOW, [http://www.abajournal.com/news/article/tiger\\_cub\\_law\\_prof\\_says\\_moms\\_and\\_schools\\_should\\_teach\\_more\\_about\\_emotional/](http://www.abajournal.com/news/article/tiger_cub_law_prof_says_moms_and_schools_should_teach_more_about_emotional/).

<sup>3</sup> Huang, *supra* note 1, at 321.

<sup>4</sup> *Star Trek: Devil in the Dark*, (NBC television broadcast, Mar. 9, 1967).

<sup>5</sup> Amy Chua, YALE LAW SCHOOL, <https://www.law.yale.edu/amy-chua> (last visited Aug. 20, 2016).

<sup>6</sup> *Id.*

<sup>7</sup> AMY CHUA, BATTLE HYMN OF THE TIGER MOTHER (2011).

<sup>8</sup> Email from Amy Chua, to author (Nov. 12, 2011, at 12:54 MT) (on file with author).

Since *Tiger Cub* was published, several psychological studies question the prevalence and effectiveness of tiger parenting.<sup>9</sup> Many believe the current obsession with extremely narrowly focused standardized tests in East Asian countries and to a lesser extent America is crazy, dangerous, and misguided.<sup>10</sup> In American academia, there is renewed interest about Chinese philosophy.<sup>11</sup> Michael Puett, who is the Walter C. Klein Professor of Chinese History at Harvard University, teaches the third most popular course among Harvard undergraduates (after introduction to economics and introduction to computer science), namely Ethical Reasoning 18: Classical Chinese Ethical and Political Theory.<sup>12</sup> Puett and freelance journalist Christine Gross-Loh recently co-authored a book<sup>13</sup> based on that course.

Jin Li, a professor of education and human development at Brown University,<sup>14</sup> researches<sup>15</sup> about how an East Asian virtue model of learning to transform and perfect oneself morally and socially<sup>16</sup> fundamentally differs from a Western mind model of learning to cultivate the mind to understand and master the world.<sup>17</sup> Professor Li traces the virtue model of learning to Confucian principles and East Asian traditions emphasizing one's internal world, authenticity, integrity, and the whole person.<sup>18</sup> She also traces the mind model of learning to Socratic principles and Western traditions emphasizing one's external world, critical thinking, knowledge of the world, and the mind.<sup>19</sup> Finally, she analyzes how these different views of learning

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<sup>9</sup> See, e.g., Su Yeong Kim, *Does "Tiger Parenting" Exist? Parenting Profiles of Chinese Americans and Adolescent Developmental Outcomes*, 4 *ASIAN AM. J. PSYCHOL.* 7, 7 (2013); Su Yeong Kim, *Defining Tiger Parenting in Chinese Americans*, 56 *HUM. DEV.* 217, 217 (2013); Jeffrey Liew et al., *Parental Autonomy Support Predicts Academic Achievement Through Emotion-Related Self-Regulation and Adaptive Skills in Chinese American Adolescents*, 5 *ASIAN AM. J. PSYCHOL.* 214, 214 (2014).

<sup>10</sup> Emanuel Pastreich, *Interview with Harvard's Most Popular Professor, Michael Puett: What's So Great, or Not, About Asian Education*, HUFFINGTON POST BLOG (Nov. 4, 2015, 8:54 AM), [http://www.huffingtonpost.com/emanuel-pastreich/interview-with-michael-puett\\_b\\_8471666.html](http://www.huffingtonpost.com/emanuel-pastreich/interview-with-michael-puett_b_8471666.html).

<sup>11</sup> Carlin Romano, *Chinese Philosophy Lifts Off in America*, CHRONICLE HIGHER EDUC., Sept. 23, 2013, <http://chronicle.com/article/Dao-Rising-Chinese-Philosophy/141693/>.

<sup>12</sup> Christine Gross-Loh, *Why Are Hundreds of Harvard Students Studying Ancient Chinese Philosophy?*, ATLANTIC (Oct. 8, 2013), <http://www.theatlantic.com/education/archive/2013/10/why-are-hundreds-of-harvard-students-studying-ancient-chinese-philosophy/280356/>.

<sup>13</sup> MICHAEL PUETT & CHRISTINE GROSS-LOH, *THE PATH: WHAT CHINESE PHILOSOPHERS CAN TEACH US ABOUT THE GOOD LIFE* (2016).

<sup>14</sup> Jen Li, RESEARCHERS AT BROWN UNIVERSITY, <https://vivo.brown.edu/display/jili> (last visited Aug. 20, 2016).

<sup>15</sup> JEN LI, *CULTURAL FOUNDATIONS OF LEARNING: EAST AND WEST* (2012). See also Jen Li, *Mind or Virtue: Western and Chinese Beliefs About Learning*, 14 *CURRENT DIRECTIONS PSYCHOL. SCI.* 190, 190 (2005); Jen Li, *U.S. and Chinese Cultural Beliefs About Learning*, 95 *J. EDUC. PSYCHOL.* 258, 258 (2003); Marieke C. van Egmond et al., *Mind and Virtue: The Meaning of Learning, A Matter of Culture?*, 2 *LEARNING, CULTURE & SOC. INTERACTION* 208, 208 (2013).

<sup>16</sup> JEN LI, *CULTURAL FOUNDATIONS OF LEARNING: EAST AND WEST* 56, Figure 2.2 (2012).

<sup>17</sup> *Id.* at 36, Figure 2.1.

<sup>18</sup> *Id.* at 35-55.

<sup>19</sup> *Id.* at 21-35.

influence how people and societies approach formal education, also known as schooling,<sup>20</sup> and informal education, also known as parenting.<sup>21</sup>

In 2014, Amy Chua and Jed Rubenfeld, Robert R. Slaughter Professor of Law at Yale Law School,<sup>22</sup> published a controversial book proposing that a triple package of elements, namely a sense of group superiority, individual insecurity, and good impulse control, account for academic success, high incomes, and occupational status in America.<sup>23</sup> Shelly Lundberg, an economist at the Broom Center for Demography at the University of California, Santa Barbara, recently critically reviewed the idea of such a triple package.<sup>24</sup> That review noted “the authors raise issues relevant to current research on noncognitive skills—that there are important trait-environment interactions in the determinants of economic success, and that the source and impact of aspirations deserves greater attention.”<sup>25</sup>

I have vivid memories of the source and impact of aspirations from the first day after school in the first grade of public school 183 (P.S. 183) on the upper Eastside of Manhattan. My parents bought me a set of Ivy League book covers in which to wrap my textbooks. I could of course have used brown paper bags to cover my textbooks. The Ivy League book covers though provided my parents with the opportunity to explain how there is an Ivy League consisting of eight colleges and that within the Ivy League, there is a clear, established hierarchical ranking of Harvard, Yale, Princeton, etc. When I was 13, I applied to college at Harvard, Yale, Princeton, and New York University (because my tiger mom teaches biochemistry at New York University medical school). I attended college at Princeton from the age of 14 to that of 17. When I was 16, I applied to graduate school at Harvard, Yale, and Princeton. I attended graduate school at Harvard from the age of 17 to that of 24. In the autumn of 2011, I was a visiting lecturer at Yale law school, co-teaching a seminar titled Neuroscience & Law.<sup>26</sup> My tiger mom view that visit as being an expected accomplishment in contrast with my being on the faculty of the University of Colorado law school and having been on the faculty of Temple University law school, the University of Minnesota law school, and the University of Pennsylvania law school as

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<sup>20</sup> *Id.* at 187-222.

<sup>21</sup> JEN LI, CULTURAL FOUNDATIONS OF LEARNING: EAST AND WEST 223–75 (2012).

<sup>22</sup> Jed Rubenfeld, YALE LAW SCHOOL, <https://www.law.yale.edu/jed-rubenfeld>.

<sup>23</sup> AMY CHUA & JED RUBENFELD, THE TRIPLE PACKAGE: HOW THREE UNLIKELY TRAITS EXPLAIN THE RISE AND FALL OF CULTURAL GROUPS IN AMERICA (2014).

<sup>24</sup> Shelly Lundberg, *Tiger Parenting and American Inequality: An Essay on Chua and Rubenfeld's The Triple Package: How Three Unlikely Traits Explain the Rise and Fall of Cultural Groups in America*, 53 J. ECON. LITERATURE 945, 945 (2015).

<sup>25</sup> *Id.* at 945.

<sup>26</sup> Dan Kahan *Courses & Materials (Select)*, THE CULTURAL COGNITION PROJECT AT YALE LAW SCHOOL, <http://www.culturalcognition.net/dan-kahan-courses/>.

well as having also been visiting faculty at the University of Virginia law school, University of Chicago law school, and University of Southern California law school. Another expected accomplishment was being a member of the School of Social Science of the Institute for Advanced Study at 1 Einstein Drive, Princeton, New Jersey in contrast with having been on the faculty in the economics department of Tulane University, having also been visiting faculty in the finance department of the business school of Tulane University and the economics departments of the University of Southern California, Stanford University, University of California at Los Angeles, University of California at Berkeley, and Southern Methodist University.

Amy Chua recently wrote another humorous, tongue-in-cheek Wall Street Journal article about a contract she drafted for her two daughters while they were staying in her Manhattan apartment during the summer.<sup>27</sup> The contract, which is reproduced in that Wall Street Journal article, lists nine irrevocable duties and conditions that explicitly specify expectations about what is appropriate behavior. Clause 2 of the contract mandating the greeting of parents with “joy and gratitude”<sup>28</sup> is an expectation that my parents also shared with the additional expectation of bringing freshly brewed, hot jasmine tea and also a pair of slippers. Clause 3 of the contract about making the bed everyday<sup>29</sup> is also another expectation that my parents had and one that I remember arguing, to no avail, was futile because of the second law of thermodynamics implying “[t]he level of disorder in the universe is steadily increasing.”<sup>30</sup> Clause 6 of the contract about “immediately in a respectable state”<sup>31</sup> enthusiastically greeting any guests and conversing with them in the living room<sup>32</sup> is yet another expectation of my parents with again the additional expectation of bringing all guests freshly brewed, hot jasmine tea.

Since *Tiger Cub* was published, many law schools have been experiencing a state of economic, if not existential, crisis because of steep declines in the applications to, enrollments of, and jobs in legal practice for graduates of, most law schools.<sup>33</sup> To be sure, the old and tired refrain that law schools teach students to “think like lawyers” has always had its critics.<sup>34</sup> Many

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<sup>27</sup> Amy Chua, *The ‘Tiger Mother’ Has a Contract for Her Cubs*, WALL ST. J., June 10, 2016, 9:42 p.m., <http://www.wsj.com/articles/the-tiger-mother-guide-to-renting-to-your-children-1465570914?tesla=y>.

<sup>28</sup> *Id.*

<sup>29</sup> Chua, *supra* note 27

<sup>30</sup> See, e.g., Boston University Physics, *Entropy and the second law*, B.U. PHYSICS (Dec. 12, 1999), <http://physics.bu.edu/~duffy/py105/Secondlaw.html>.

<sup>31</sup> Chua, *supra* note 27.

<sup>32</sup> Chua, *supra* note 27.

<sup>33</sup> See, e.g., Elizabeth Olson, *A Refusal to Lower the Bar*, N.Y. TIMES, May 13, 2016, at B1.

<sup>34</sup> See, e.g., Kevin McKeown, *Thinking Like A Lawyer Is A Technique – Not A Lifestyle*, ABOVE THE

people, including some law school professors,<sup>35</sup> and popular media today question whether a legal education makes any economic sense.<sup>36</sup> Answering this question requires estimating a legal education's costs and benefits,<sup>37</sup> which differ by law school and vary across people. An important and often forgotten consideration is the idiosyncratic, personal, stochastic, subjective, and unobservable opportunity costs of a legal education.

One reviewer of *Tiger Cub* characterized the article as:

an entertaining, if rather rambling, narrative. Nevertheless, the legal education themes and insights he articulates are of tremendous value to the academy. Rather than exclusively focus on how well legal educators are achieving the goal of teaching students to "think like a lawyer," Huang points out that we must consider whether our defined objectives are the most important ones. Perhaps feeling (empathizing and self-actualizing) "like a lawyer," using good judgment "like a lawyer," and being professional and ethical "like a lawyer" will lead to even better outcomes. Fostering judgment, emotional intelligence, and character-building will make successful lawyers, not only in terms of dollars earned and cases won but in terms of "career and life satisfaction" and "sustainable personal happiness."<sup>38</sup>

A friend of mine was much more offended than I was by the phrase "rather rambling" that the reviewer used above to describe *Tiger Cub*. The reviewer had emailed an advance copy of the review and so perhaps the phrase "rather rambling" became less offensive with time, as do many things in life by virtue of hedonic adaptation.<sup>39</sup> Also undoubtedly, the passage of time mellows us all. A former economics department faculty colleague's reaction to *Tiger Cub* included these apt sentiments: "It looks like you're being as creative as ever—and as ever, perhaps not all your colleagues appreciate that. It's interesting to see how you've mellowed over the past 15 years. ... It's good to see you being so successful. And I hope happy!"<sup>40</sup>

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LAW, June 11, 2014, <http://abovethelaw.com/2014/06/thinking-like-a-lawyer-is-a-technique-not-a-lifestyle/>; Nancy B. Rapaport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?*, 1 J. ASS'N LEGAL WRITING DIRECTORS 91, 91 (2002).

<sup>35</sup> See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

<sup>36</sup> See, e.g., Noam Scheiber, *The Law School Bust*, N.Y. TIMES, June 19, 2016, at BU1.

<sup>37</sup> See, e.g., Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185, 1185 (2012); Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. LEGAL STUD. 249, 249 (2014).

<sup>38</sup> Andrea Boyack, *Article of the Month April 2014*, INST. FOR L. TEACHING AND LEARNING, <http://lawteaching.org/articles/index.php?CtrlNo=53>.

<sup>39</sup> See, e.g., Peter H. Huang, *Emotional Adaptation and Lawsuit Settlements*, 108 COLUM. L. REV. SIDEBAR 50, 50 (2008).

<sup>40</sup> Email from David Malueg to author, (Nov. 28, 2011, at 20:56 MT) (on file with author).

Many law professors now propose creating a law school curriculum that fosters law students developing a variety of skill sets,<sup>41</sup> such as those from a list of 26 factors that law professor Marjorie Shultz and psychology professor Sheldon Zedeck empirically identified as important to lawyer effectiveness.<sup>42</sup> *Tiger Cub* emphasized teaching law students about<sup>43</sup> judgment and decision-making,<sup>44</sup> emotions and emotional intelligence,<sup>45</sup> and character strengths<sup>46</sup>, ethics, and professionalism.<sup>47</sup> Since *Tiger Cub*, there has been much renewed interest about and also more widespread recognition of the importance of teaching noncognitive skills in education and parenting.<sup>48</sup>

*Tiger Cub* advocated evaluating (legal) education and (tiger) parenting according to five normative criteria that University of Pennsylvania professor and founder of positive psychology Martin Seligman introduced and summarized with the acronym PERMA: Positive emotion, Engagement, Relationships, Meaning, and Accomplishment.<sup>49</sup> Since *Tiger Cub* was published, the field of positive education,<sup>50</sup> which applies positive psychology to education, has flourished.<sup>51</sup> At several points in the article, there are sug-

<sup>41</sup> See, e.g., Nancy B. Rapaport, *Rethinking U.S. Legal Education No More "Same Old, Same Old"*, 45 CONN. L. REV. 1409, 1409 (2013).

<sup>42</sup> Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQUIRY 620, 630, Table 1 (2011). This list of lawyer effectiveness factors includes: Creativity/Innovation, Problem Solving, Practical Judgment, Influencing and Advocating, Listening, Negotiation Skills, Able to See the World Through the Eyes of Others, Networking and Business Development, Providing Advice & Counsel & Building Relationships with Clients, Developing Relationships within the Legal Profession, Passion and Engagement, Stress Management, and Self-Development.

<sup>43</sup> Huang, *supra* note 1, at 305-09.

<sup>44</sup> See, e.g., JUDGMENT AND DECISION MAKING AS A SKILL (Mandeep K. Dhami et al. eds., 2013).

<sup>45</sup> See, e.g., CHADE-MENG TAN, *SEARCH INSIDE YOURSELF: THE UNEXPECTED PATH TO ACHIEVING SUCCESS, HAPPINESS (AND WORLD PEACE)* (2014).

<sup>46</sup> CHRISTOPHER PETERSON & MARTIN E. P. SELIGMAN, *CHARACTER STRENGTHS AND VIRTUES: A HANDBOOK AND CLASSIFICATION* (2004); *CHARACTER STRENGTHS MATTER: HOW TO LIVE A FULL LIFE* (Shannon Polly & Kathryn H. Britton eds., 2015).

<sup>47</sup> See, e.g., Peter H. Huang, *Teaching (About) Mindfulness: A Tale of Two Courses*, Apr. 28, 2016, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2771578](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2771578) (discussing my experiences teaching (about) mindfulness in legal ethics and professionalism).

<sup>48</sup> See, e.g., ANGELA DUCKWORTH, *GRIT: THE POWER OF PASSION AND PERSEVERANCE* (2016); CAMILLE A. FARRINGTON ET AL., *TEACHING ADOLESCENTS TO BECOME LEARNERS THE ROLE OF NONCOGNITIVE FACTORS IN SHAPING SCHOOL PERFORMANCE: A CRITICAL LITERATURE REVIEW* (2013); PAUL TOUGH, *HOW CHILDREN SUCCEED: GRIT, CURIOSITY, AND THE HIDDEN POWER OF CHARACTER* (2013); PAUL TOUGH, *HELPING CHILDREN SUCCEED: WHAT WORKS AND WHY* (2016).

<sup>49</sup> MARTIN E. P. SELIGMAN, *FLOURISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING* (2012).

<sup>50</sup> *Id.* at 78-97.

<sup>51</sup> See, e.g., *EVIDENCE-BASED APPROACHES IN POSITIVE EDUCATION: IMPLEMENTING A STRATEGIC FRAMEWORK FOR WELL-BEING IN SCHOOLS* (Matthew A. White & A. Simon Murray eds., 2015). See also INTERNATIONAL POSITIVE EDUCATION NETWORK, <http://www.ipositive-education.net/> (last visited Aug. 20, 2016).



gestions that joy should be a goal in life, education, and parenting,<sup>52</sup> and since *Tiger Cub*, a lot more has been written about finding joy.<sup>53</sup>

Positive psychology is related to mindfulness.<sup>54</sup> At several points in *Tiger Cub*, there also are brief discussions about mindfulness.<sup>55</sup> Over the last five years, those acorns of inchoate thoughts about mindfulness have grown into oak trees of more nuanced and sustained thoughts about mindfulness.<sup>56</sup> I now appreciate how mindfulness practice can help law students flourish.<sup>57</sup> I wrote this Essay in response to a March 2016 email invitation from University of Richmond Law School Professor Shari Motro.<sup>58</sup> We met virtually by email in May 2013,<sup>59</sup> when we were randomly assigned to be partners in preparing for participating in a *Mindfulness and Legal Education* workshop, held at the University of Berkeley School of Law in June of 2013.<sup>60</sup> Both of us had also participated in a related conference, *The Mindful Lawyer: Practices & Prospects for Law School, Bench, and Bar*, held at the University of Berkeley School of Law in October of 2010.<sup>61</sup> In August of 2016, University of Denver Law School professor Debra Austin<sup>62</sup> and I co-organized a related conference, *Mindfulness and Thriving Legal Practices*.<sup>63</sup>

Professor Motro's email invited submissions of a short and informal reflection, or longer essay, about integrating a contemplative perspective into

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<sup>52</sup> Huang, *supra* note 1, at 301, 303, 311, 319-20.

<sup>53</sup> See, e.g., CHADE-MENG TAN, *JOY ON DEMAND: THE ART OF DISCOVERING THE HAPPINESS WITHIN* (2016). See also ISSAC PRILLELTENSKY, *THE LAUGHING GUIDE TO WELL-BEING: USING HUMOR AND SCIENCE TO BECOME HAPPIER AND HEALTHIER* (2016); *THE LAUGHING GUIDE*, <http://www.thelaughingguide.com/> (last visited Aug. 20, 2016).

<sup>54</sup> See, e.g., Peter H. Huang, *How Improving Decision-Making and Mindfulness Can Improve Legal Ethics and Professionalism*, 21 J.L. BUS. & ETHICS 35, 74-75, n. 271 (2015); MINDFULNESS IN POSITIVE PSYCHOLOGY: THE SCIENCE OF MEDITATION AND WELLBEING (Itai Ivztan & Tim Lomas, eds. 2016).

<sup>55</sup> Huang, *supra* note 1, at 343-44, 346.

<sup>56</sup> Former Chief Justice William Rehnquist famously stated about securities class actions that "we deal with a judicial oak which has grown from little more than a legislative acorn." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 737 (1975).

<sup>57</sup> Peter H. Huang, *1st Blog Post of the Law School Wellness Project*, STANFORD LAW SCHOOL WELLNESS PROJECT, <https://law.stanford.edu/2016/08/08/1st-blog-post-of-the-law-school-wellness-project/>.

<sup>58</sup> Email from Shari Motro, Professor of Law, to author (Mar. 24, 2016, 11:29 MT) (on file with author).

<sup>59</sup> E Email from Martha Ruch on behalf of Charles Halpern, to author (May 15, 2013, 13:39 MT) (on file with author).

<sup>60</sup> Workshop on Mindfulness in Legal Education, BERKELEY LAW: UNIV. OF CAL., <https://www.law.berkeley.edu/workshop-on-mindfulness-in-legal-education/> (last visited Aug. 20, 2016).

<sup>61</sup> The Proceedings of the Mindful Lawyer Conference, <http://www.mindfullawyerconference.org/>.

<sup>62</sup> Debra Austin, UNIVERSITY OF DENVER STURM COLLEGE OF LAW, <http://www.law.du.edu/index.php/profile/debra-austin.s>

<sup>63</sup> *Mindfulness and Thriving Legal Practices 2016 Summer Conference*, UNIV. OF COLO. L. SCH., <http://www.colorado.edu/law/research/mindfulness-and-thriving-legal-practices>.

law teaching.<sup>64</sup> Professor Motro's email included an email from Kassie Schroth, outgoing editor-in-chief of the Richmond Journal of Law and the Public Interest, about sharing a transformative message with a wider audience through a special issue of the Richmond Journal of Law and the Public Interest, dedicated to "mindfulness, with a special focus on personal stories about how students and graduates can work to craft a professional identity that aligns with their authentic intentions."<sup>65</sup> Ms. Schroth's email expressed "hope that this project will serve to build a bridge between the Richmond community and the larger national conversation on mindfulness as it pertains to law's mission in society."<sup>66</sup>

At the suggestion of Michael Hunter Schwartz, professor and the dean of the University of Arkansas at Little Rock law school, I started to read a book titled *The Art of Positive Communication*,<sup>67</sup> written by University of Arkansas at Little Rock professor of speech communication and interim chair of the department of criminal justice Julien C. Mirivel.<sup>68</sup> Practicing mindfulness helps me to communicate more positively in personal and professional situations, including teaching students. In teaching, I aim to live up to Julien Mirivel's quote: "When I teach, my main goal is essentially to inspire students to become who they are in their best moments, to try to become a role model for them, to show them that it's okay to be passionate about what you do, and to just help them grow into what they see for themselves in their own dreams."<sup>69</sup> Teaching is akin to and an aspect of parenting.<sup>70</sup> It should be unsurprising that practicing mindfulness helps improve teaching and parenting.<sup>71</sup>

The rest of this Essay consists of a section analyzing mindfulness about mindfulness, a section discussing some personal experiences and stories about how mindfulness helps law students to engage in positive personal

<sup>64</sup> Email from Shari Motro, to author (Mar. 24, 2016, 11:29 MT) (on file with author).

<sup>65</sup> Email from Kassie Schroth to Shari Motro (Mar. 23, 2016, 13:12 MT) (on file with author).

<sup>66</sup> *Id.*

<sup>67</sup> JULIEN C. MIRIVEL, *THE ART OF POSITIVE COMMUNICATION* (2014).

<sup>68</sup> Julien Mirivel (Interim Chair), UNIV. OF ARK. AT LITTLE ROCK, DEPT. OF CRIM. JUST., <http://ualr.edu/criminaljustice/faculty/julien-mirivel/> (last visited Aug. 20, 2016).

<sup>69</sup> University of Arkansas at Little Rock, *Faculty Excellence: Julien C. Mirivel*, YOUTUBE (Apr. 15, 2011), <https://www.youtube.com/watch?v=V3osViV-jd0>.

<sup>70</sup> Implications of Tiger Parenting for Legal Education, Conference Schedule, June 27–28, 2013, UNIV. OF COLO. L. SCH., <http://lawweb.colorado.edu/apps/eventRegistration/tigerParenting/schedule.jsp>.

<sup>71</sup> See, e.g., KRISTEN RACE, *MINDFUL PARENTING: SIMPLE AND POWERFUL SOLUTIONS FOR RAISING CREATIVE, ENGAGED, HAPPY KIDS IN TODAY'S HECTIC WORLD* (2014); SCOTT L. ROGERS, *MINDFUL PARENTING: MEDITATIONS, VERSES, AND VISUALIZATIONS FOR A MORE JOYFUL LIFE* (2005); DEBORAH SCHOEBERLEIN DAVID, *MINDFUL TEACHING AND TEACHING MINDFULNESS: A GUIDE FOR ANYONE WHO TEACHES ANYTHING* (2009); SHEFALI TSABARY, *THE AWAKENED FAMILY: A REVOLUTION IN PARENTING* (2016).

and professional transformation, and a very brief conclusion about conceiving of mindfulness as hope.

#### MINDFULNESS ABOUT MINDFULNESS

A Google search of the word “mindfulness” in August 2016 yielded 40.2 million results (in 0.48 seconds). Jon Kabat-Zinn, University of Massachusetts Medical School molecular biologist, professor of medicine emeritus, founding executive director of the Center for Mindfulness in Medicine, Health Care, and Society at the University of Massachusetts Medical School,<sup>72</sup> and creator of the famous Mindfulness Based Stress Reduction program,<sup>73</sup> provides one well-known definition of mindfulness “as a state of mind: the act of “paying attention on purpose” to the present moment, with a “non-judgmental” attitude.”<sup>74</sup> Ellen Langer, Harvard University social psychology professor,<sup>75</sup> defines mindfulness as “the process of actively noticing new things, relinquishing preconceived mindsets, and then acting on the new observations.”<sup>76</sup> Ellen Langer’s definition of mindfulness aptly captures what many American law school professors state as the goal of the first year of American legal education, namely to teach people how to think as lawyers do. Whether lawyers actually think in a distinctive manner that differs from non-lawyers and whether law schools are or can be successful at imparting such a unique way of thinking are contestable, debatable, and unclear. What is clear is that most law professors and most non-law professors disagree over the definition of the phrase “critical thinking.”<sup>77</sup> For ex-

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<sup>72</sup> Jon Kabat-Zinn, UNIV. OF MASS. MED. SCH., <http://www.umassmed.edu/cfm/about-us/people/2-meet-our-faculty/kabat-zinn-profile/> (last visited Aug. 20, 2016).

<sup>73</sup> *What is Mindfulness-Based Stress Reduction?*, MINDFUL LIVING PROGRAMS, <http://www.mindfullivingprograms.com/whatMBSR.php> (last visited Aug. 20, 2016). See also Online Mindfulness-Based Stress Reduction (MBSR), PALOUSE MINDFULNESS, <http://palousemindfulness.com/> (last visited Aug. 20, 2016).

<sup>74</sup> Lauren Cassani Davis, *When Mindfulness Meets the Classroom*, THE ATLANTIC, Aug. 31, 2015, <http://www.theatlantic.com/education/archive/2015/08/mindfulness-education-schools-meditation/402469/>.

<sup>75</sup> Ellen J. Langer, HARV. UNIV., <http://scholar.harvard.edu/langer/home>.

<sup>76</sup> Cara Feinberg, *The Mindfulness Chronicles: On “the Psychology of Possibility”*, HARV. MAG., September–October 2010, <http://harvardmagazine.com/2010/09/the-mindfulness-chronicles>.

<sup>77</sup> See, e.g., Diane F. Halpern, *Teaching Critical Thinking for Transfer Across Domains: Dispositions, Skills, Structure Training, and Metacognitive Monitoring*, 53 AM. PSYCHOL. 449, 449 (1998); N. G. Holmes et al., *Teaching Critical Thinking*, 112 PROC. NAT’L ACAD. SCI. 11199, 11199 (2015); Daniel T. Willingham, *Critical Thinking Why Is It So Hard to Teach?*, AM. EDUCATOR, Summer 2007, at 8.

ample, most law professors would not include as part of critical thinking applying “mathematical skills to solve real-world problems.”<sup>78</sup>

The above two and many other alternative definitions of mindfulness typically share a common idea, namely that mindfulness “is, essentially, being aware of your body and your mind; being aware of thoughts and emotions as they pass through your head, and sensations that occur in your body.”<sup>79</sup> Mindfulness may sound like it should be simple to do and for some people it may be simple. However, for many of us today, there are constant distractions and perennial (and often self-imposed) busyness that permeate our lives, making it easy to not be mindful. The frenetically rapid and unrelenting pace of modern life is “making it easier to act on impulse rather than calmly respond ... It also makes us less likely to recognize our surroundings or positive emotions, and thus, we miss out on them. So how do we fix this, and increase our mindfulness? The answer is meditation.”<sup>80</sup> A number of smartphone apps facilitate the practice of meditation.<sup>81</sup> In addition to contemplative meditation practice,<sup>82</sup> mindfulness can also occur through practicing such popular and well-known forms of physical movement as qigong,<sup>83</sup> tai chi,<sup>84</sup> and yoga.<sup>85</sup>

Mindfulness is a skill that people can and have learned and improved upon through deliberate practice. Mindfulness, when viewed as “a way to fine-tune our responses, it may be the one “technology” that allows us to survive our current epidemic of distraction. It can improve our relationships. It might even save our lives.”<sup>86</sup>

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<sup>78</sup> Barry Stein & Ada Haynes, *Engaging Faculty in the Assessment and Improvement of Students' Critical Thinking Using the Critical Thinking Assessment Test*, 43 CHANGE: THE MAG. HIGHER LEARNING 44, 45 (2011).

<sup>79</sup> Brendan Hesse, *A Beginner's guide to Mindfulness meditation, and the best apps for learning*, YAHOO! TECH, May 14, 2016, <https://www.yahoo.com/tech/beginner-guide-mindfulness-meditation-best-191505216.html>.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> See *Meditation and Mindfulness*, THE CTR. FOR CONTEMPLATIVE MIND IN SOC'Y, <http://www.contemplativemind.org/practices/tree/meditation> (last visited Aug. 20, 2016).

<sup>83</sup> See e.g., *What is Qigong?*, NAT'L QIGONG ASSOC., <http://nqa.org/about-nqa/what-is-qigong/> (last visited Aug. 20, 2016).

<sup>84</sup> See e.g., Clinic Staff, *Tai Chi: A Gentle Way to Fight Stress*, MAYO CLINIC <http://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/tai-chi/art-20045184> (last visited Aug. 20, 2016).

<sup>85</sup> See e.g., HALLIE NEUMAN LOVE & NATHALIE MARTIN, *YOGA FOR LAWYERS: MIND-BODY TECHNIQUES TO FEEL BETTER ALL THE TIME* (2015).

<sup>86</sup> Teresa Jordan, *How to Overcome Distraction, Seize the 'Meta-Moment' and Do the Right Thing*, L.A. TIMES, Jan. 30, 2015, 7:31 p.m., <http://www.latimes.com/opinion/op-ed/la-oe-jordan-living-virtuously-mindfulness-20150201-story.html>.

As a very young child, I was personally introduced to mindfulness by the example of my grandmother's daily Buddhist meditative practice. Modern "Mindfulness Meditation is a form of meditation that incorporates aspects from Buddhist meditation styles, like Vipassana and Zen, but is presented in basic terms divested of any religious or overtly spiritual/metaphysical vestiges and vocabulary."<sup>87</sup> There are many introductions to mindfulness in the fields of business,<sup>88</sup> conflict resolution,<sup>89</sup> negotiations,<sup>90</sup> and the law.<sup>91</sup>

I enjoyed and welcomed the opportunity that this unique collaboration with the Richmond Journal of Law and the Public Interest provided for me to engage in sustained contemplation and opportunities to practice mindfulness about mindfulness. A friend and former colleague, Doris Cheung, suggested in an email<sup>92</sup> that "Meta-Mindfulness" should be the title of my next article, after I had described how she felt by the word: "meta-mindfulness" in an email reply<sup>93</sup> to her statement: "I've noticed when I'm stressed or super busy, I'm less mindful. Actually, that sounds kinda funny because at least I'm being mindful about not being mindful."<sup>94</sup>

I had been reading and thinking about cognitive economics that is defined to be "the economics of what is in people's minds."<sup>95</sup> One of the central themes of cognitive economics is "finite cognition (often misleadingly called "bounded rationality")."<sup>96</sup> "Finite cognition means something more

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<sup>87</sup> Hesse, *supra* note 79.

<sup>88</sup> See e.g., DAVID GELLES, *MINDFUL WORK: HOW MEDITATION IS CHANGING BUSINESS FROM THE INSIDE OUT* (2016).

<sup>89</sup> See e.g., Peter H. Huang, *Teaching (About) Mindfulness: A Tale of Two Courses*, Apr. 28, 2016, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2771578](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2771578); Leonard L. Riskin & Rachel Anne Wohl, *Mindfulness in the Heat of Conflict: Taking STOCK*, 20 HARV. NEGOT. L. REV. 121, 123 (2015).

<sup>90</sup> See e.g., Leonard L. Riskin, *Further Beyond Reason: Emotions, the Core Concerns, and Mindfulness in Negotiation*, 10 NEV. L.J. 289, 289 (2010); Leonard L. Riskin, *Beginning with Yes: A Review Essay on Michael Wheeler's The Art of Negotiation: How to Improvise Agreement in a Chaotic World*, 16 CARDOZO J. CONFLICT RESOL. 605, 605 (2015); Leonard L. Riskin, *Knowing Yourself: Mindfulness*, THE NEGOTIATOR'S FIELDBOOK 239, 239 (Christopher Honeyman & Andrea K. Schneider eds., 2006).

<sup>91</sup> See e.g., Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1, 1 (2002). An introduction to mindfulness in conflict resolution for lawyers is the podcast of an American Bar Association program titled, *Mindfulness: A Pathway to Success, Happiness, and Conflict Resolution*. American Bar Association Section of Science & Technology Law, Behavioral and Neuroscience Law Committee, and Membership and Diversity Committee, *Mindfulness: A Pathway to Success, Happiness, and Conflict Resolution*, Mar. 24, 2016.

<sup>92</sup> Email from Doris Cheung to author (May 3, 2016, 22:36 MT) (on file with author).

<sup>93</sup> Email from Peter H. Huang to Doris Cheung (May 3, 2016, 15:34 MT) (on file with author).

<sup>94</sup> Email from Doris Cheung to author (May 3, 2016, 12:16 MT) (on file with author) (describing her then current mindfulness about her past not being mindful).

<sup>95</sup> Miles Kimball, *Cognitive Economics*, 66 JAPANESE ECON. REV. 167, 167 (2015).

<sup>96</sup> *Id.* at 167, 172–73.

than just imperfect information: it means finite intelligence, imperfect information processing, and decision-making that is costly.”<sup>97</sup> The reality of scarce, finite cognition implies that people may not be mindful about mindfulness, if the definition of mindfulness is a form of cognition, where cognition is defined to be “all of the other operations of the human mind besides the basic recording and assessing of information, ... without the finer distinctions that psychologists often focus on.”<sup>98</sup>

Mindless mindfulness happens when people are mindful in a mindless fashion. The cognitive and mental costs of decision-making imply that after people make a lot of decisions, they can suffer from decision fatigue.<sup>99</sup> People often overthink trivial decisions and get stuck in decision quicksand.<sup>100</sup> Spending precious energy and time being mindful about inconsequential or trivial decisions is not an efficient allocation of scarce cognitive and mental resources.<sup>101</sup> Yet, people often waste an inordinate amount of personal effort and time worrying and stressing over choices that are ultimately not important. Conversely, those same and other people allocate little or even any cognitive and mental resources to such important decisions as drafting a will, retirement planning, and providing for long-term health care because such decisions involve fears of and thoughts about mortality.<sup>102</sup>

Tiger parenting and traditional American doctrinal legal education exemplify mindless mindfulness because they emphasize only certain attributes of being a successful human and lawyer. Tiger cubs and law students are taught to be mindful about such things as analytical reasoning, external indicia of success, extrinsic motivations, logical argument, respecting authority, respecting hierarchy, and respecting precedent. In fact, before law students enter law school, they already know how to be mindful in the sense of paying attention to such things as preparing for the LSATs. This Article simply asks whether law students are being mindful about to what are they paying attention.

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<sup>97</sup> *Id.* at 172.

<sup>98</sup> *Id.* at 173.

<sup>99</sup> See, e.g., Shai Danziger et al., *Extraneous Factors in Judicial Decisions*, 108 PROC. NAT’L ACAD. SCI. 6889, 6889 (2011).

<sup>100</sup> See, e.g., Aner Sela & Jonah Berger, *Decision Quicksand: How Trivial Choices Suck Us In*, 39 J. CONS. RES. 360, 360 (2012).

<sup>101</sup> In other words, reallocating cognitive and mental resources away from trivial decisions to consequential ones would improve people’s individual subjective well-being. This well-known concept of efficiency is the notion of Pareto efficiency that is commonplace in law and economics.

<sup>102</sup> See, e.g., ERNEST BECKER, *THE DENIAL OF DEATH* (1973); Robin Hanson, *Fear of Death and Muddled Thinking – It Is So Much Worse Than You Think*, Aug. 2005; Wojciech Kopczuk & Joel Slemrod, *Denial of Death and Economic Behavior*, 5 ADVANCES IN THEORETICAL ECON. Art. 5, 1 (2005); Joel Slemrod, *Thanatology and Economics: The Behavioral Economics of Death*, 93 AM. ECON. REV. 371, 371 (2003).

Mindful mindfulness occurs if people are mindful in a mindful way. This Article defines meta-mindfulness as mindfulness about mindfulness. This definition is analogous to how psychologists define meta-cognition as cognition about cognition, knowing about knowing, or thinking about thinking.<sup>103</sup> Being mindful about mindfulness also addresses many of the concerns that some people have voiced over the popularization of a shallow and impoverished conception of mindfulness derisively known as “McMindfulness.”<sup>104</sup> For example, Psychiatrist Sally Satel and psychologist Scott O. Lilienfeld criticize the “neurocentric” view of the human mind that is reductionist in treating subjective experiences as merely biological phenomena.<sup>105</sup> Two psychologists Miguel Farias and Catherine Wikholm critically analyze the research about meditation and mindfulness, concluding that for some people both practices may have unexpected consequences.<sup>106</sup>

In the context of law professors teaching students about mindfulness, there is also the concern that applies whenever law professors teach students about non-law subjects if those law professors do not have any specialized knowledge or training concerning those non-law subjects. This is a frequent, genuine, legitimate, and often quite underappreciated problem if law professors teach any and all non-law subjects, such as economics, education, history, neuroscience, psychology, philosophy, and sociology. Of course, the solution to this problem is quite obvious and straightforward, namely that law professors should acquire the requisite specialized knowledge or training about any non-law subjects that they choose to teach their students, including mindfulness. Unfortunately because mindfulness can be simple to learn to practice,<sup>107</sup> some law professors do not know or learn about ethical, neuroscience, philosophical, and psychological aspects of mindfulness.

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<sup>103</sup> See, e.g., Jennifer A. Livingston, *Metacognition: An Overview*, (1997) <http://gse.buffalo.edu/fas/shuell/cep564/metacog.htm>; *Metacognition*, VANDERBILT UNIV., <https://cft.vanderbilt.edu/guides-sub-pages/metacognition/> (last visited Aug. 20, 2016).

<sup>104</sup> See, e.g., Hank Pellissier, Interview of Terry Hyland, *McMindfulness: Is Buddhism Contaminated by Capitalism?*, INST. FOR ETHICS AND EMERGING TECH., Feb. 16, 2016, <http://ieet.org/index.php/IEET/more/pellissier20160206>; Dr. Miles Neale, *McMindfulness and Frozen Yoga: Rediscovering the Essential Teachings of Ethics and Wisdom*, <http://www.milesneale.com/pdf/McMindfulness.pdf> (last visited Aug. 20, 2016).; Eleanor Rosch, *More Than Mindfulness: When You Have A Tiger By the Tail, Let It Eat You*, 18 PSYCHOL. INQUIRY 258, 258 (2007).

<sup>105</sup> SALLY SATEL & SCOTT O. LILIENFELD, *BRAINWASHED: THE SEDUCTIVE APPEAL OF MINDLESS NEUROSCIENCE* (2015).

<sup>106</sup> MIGUEL FARIAS & CATHERINE WIKHOLM, *THE BUDDHA PILL: CAN MEDITATION CHANGE YOU?* (2015).

<sup>107</sup> Ellen Langer, *Mindfulness Isn't Much Harder Than Mindlessness*, HARV. BUS. REV., Jan. 13, 2016, <https://hbr.org/2016/01/mindfulness-isnt-much-harder-than-mindlessness>.

## META-MINDFULNESS AS POSITIVE TRANSFORMATION

I teach about meta-mindfulness whenever and wherever there is an opportunity, reason, or benefit from doing so. In torts, we talk about mindfulness as a form of taking care in the sense of precaution. Because the University of Colorado law school offers torts in the fall of the first year of law school, we discuss neuroscience studies finding that mindfulness increases brain cortical thickness,<sup>108</sup> brain gray matter density,<sup>109</sup> creativity,<sup>110</sup> working memory capacity,<sup>111</sup> and Graduate Record Examination performance.<sup>112</sup> Mindfulness also reduces anxiety,<sup>113</sup> mind wandering,<sup>114</sup> and stress.<sup>115</sup> We consider how mindfulness improves decision-making,<sup>116</sup> including decisions about what level of care to choose. We also discuss happiness measures of tort damages.<sup>117</sup> Finally, we discuss how to what students pay attention or are mindful about relates to their authentic happiness, flow, positive psychology, and subjective well-being.<sup>118</sup> A student in torts emailed:

I wanted to send you a quick note before I got caught up studying for my other classes to thank you for everything this semester. You were a great professor, and I really enjoyed the class. It was one of my favorites. I think the happiness portion was great and truly refreshing to hear—especially as we start a new journey in this profession.<sup>119</sup>

<sup>108</sup> See, e.g., Sara W. Lazar et al., *Mindfulness Experience is Associated with Increased Cortical Thickness*, 16 NEUROREPORT 1893, 893 (2005).

<sup>109</sup> See, e.g., Britta K. Holzel et al., *Mindfulness Practice Leads to Increases in Regional Brain Gray Matter Density*, 191 PSYCHIATRY RES.: NEUROIMAGING 36, 36 (2011).

<sup>110</sup> See, e.g., Ellen Langer, Timothy Russell, & Noah Eisenkraft, *Orchestral Performance and the Footprint of Mindfulness*, 37 PSYCHOL. MUSIC 125, 125 (2009).

<sup>111</sup> See, e.g., Michael D. Mrazek et al., *Mindfulness Training Improves Working Memory Capacity and GRE Performance While Reducing Mind Wandering*, 24 PSYCHOL. SCI. 776, 776 (2013).

<sup>112</sup> *Id.*

<sup>113</sup> See, e.g., Fadel Zeidan et al., *Neural Correlates of Mindfulness Meditation-Related Anxiety Relief*, 9 SOC., COGNITIVE, & AFFECTIVE NEUROSCI. 751, 751 (2014).

<sup>114</sup> See, e.g., Mrazek et al., *supra* note 112, at 776.

<sup>115</sup> Sarah Green, Interview with Maria Gonzalez, *Reduce Stress with Mindfulness*, HARV. BUS. REV., <https://hbr.org/2013/12/reduce-stress-with-mindfulness/>.

<sup>116</sup> Natalia Karelaia & Jochen Reb, *Improving Decision Making through Mindfulness*, in MINDFULNESS IN ORGANIZATIONS: FOUNDATIONS, RESEARCH, AND APPLICATIONS 163 (Jochen Reb & Paul W. B. Atkins eds., 2015).

<sup>117</sup> See, e.g., Rick Swedloff & Peter H. Huang, *Tort Damages and the New Science of Happiness*, 85 IND. L.J. 553, 553 (2010).

<sup>118</sup> See, e.g., Peter H. Huang & Rick Swedloff, *Authentic Happiness and Meaning at Law Firms*, 58 SYRACUSE L. REV. 335, 348 n.89, 349 n.93 (2008).

<sup>119</sup> Email to Peter Huang, (Dec. 12, 2014, 17:04 MT) (on file with author).



In a law and economics course, we spend at least one class meeting talking about how mindfulness helps people, including lawyers, develop habits to cope with anger and anxiety,<sup>120</sup> increase resilience, and reduce stress.<sup>121</sup> We cover an article about how psychologically informed behavioral economics and happiness economics improves employment discrimination law.<sup>122</sup> That coverage offers a springboard for a discussion of how mindfulness can mitigate implicit bias.<sup>123</sup> We also discuss how the practice of mindfulness improves decision-making in a variety of ways, through utilization of thinking architecture, defined to be “a structured process that allows us to break down a complex problem, ... into a series of manageable thinking steps, so as to improve outcomes,”<sup>124</sup> and at all stages of people’s decision-making processes.<sup>125</sup> We spend part of one class session discussing nudging which is a regulatory philosophy that targets the problem of people being engaged in mindless choosing,<sup>126</sup> and how nudging implicitly or just simply assumes that helping people to become (more) mindful through education and financial incentives are not cost-effective strategies. Finally, we reflect about how law school may teach law students to focus too much on extrinsic motivations. One student in law and economics sent a heartfelt email titled just simply “Thank You”:

I just wanted to tell you how meaningful your Law & Economics course has been for me. I absolutely loved the materials you covered and the work you have done in the areas of decision making and happiness. Much of what we learned has already been enormously helpful to me personally—from getting through daily life more effectively to making big decisions less painfully. I feel like you really gave us permission to seek out alternative routes and really

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<sup>120</sup> See, e.g., NATIONAL ASSOCIATION OF WOMEN LAWYERS, *The Anxious Lawyer: An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation*, <http://www.nawl.org/theanxiouslawyer>. See also JEENA CHO & KAREN GIFFORD, *THE ANXIOUS LAWYER: AN 8-WEEK GUIDE TO A JOYFUL AND SATISFYING LAW PRACTICE THROUGH MINDFULNESS AND MEDITATION* (2016).

<sup>121</sup> Peter H. Huang, *Happiness in Business or Law*, 12 *TRANSACTIONS: TENN. J. BUS. L.* 153, 171 n.168 (2011).

<sup>122</sup> Scott A. Moss & Peter H. Huang, *How the New Economics Can Improve Employment Discrimination Law, and How Economics Can Survive the Demise of the “Rational Actor”*, 51 *WM. & MARY L. REV.* 183, 183–85 (2009).

<sup>123</sup> Rhonda V. Magee, *The Way of ColorInsight: Understanding Race and Law Effectively Through Mindfulness-Based ColorInsight Practices*, *GEO. L.J. MODERN CRITICAL RACE PERSP.* (forthcoming 2016).

<sup>124</sup> SHLOMO BENARTZI WITH ROGER LEWIN, *THINKING SMARTER: SEVEN STEPS TO YOUR FULFILLING RETIREMENT...AND LIFE 5* (2015).

<sup>125</sup> Huang, *supra* note 54, at 71-75. See also Peter H. Huang, *Empowering People to Choose Wisely By Democratizing Mindfulness and Thinking Tools*, Nov. 1, 2015, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2639953](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2639953); Karelaia & Reb, *supra* note 116.

<sup>126</sup> RICHARD H. THALER & CASS SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* 35, 37, 43, 44 (2009).

question what kind of career and life we truly desire. I have now graduated, but I personally found law school to feel quite confining and like I was on some fast-moving train to a certain career and life that I did not really want at all. I worked at a law firm and was extremely unhappy. One of the hardest but most relieving decisions I have ever made was declining the offer to work at the firm. I have decided to not practice and I actually moved to NYC—a place I have long wanted to live and I just finally made the leap.

I still often think of and find comfort in many of the things you spoke about. I do not know how things will end up for me in NYC, or in the future in general, but I feel like I am finally off the "success train" and free to live more openly and honestly with myself. And, importantly, I feel much less pressure to be any particular thing. Thank you for providing this much needed insight in a place where it is rarely offered but desperately needed by many. I am extremely grateful to you.<sup>127</sup>

My section of legal ethics and professionalism is one of many sections the University of Colorado, Boulder Law School offers annually, with all of the sections capped at forty-five students. Since my first time teaching a section of this upper-level required law school course in the spring of 2012 and every spring thereafter, mindfulness forms a part of the course. Over time, mindfulness has become a core, organizing, and recurring theme of the course. It still remains thus far just one out of several course themes. The University of Miami law school also offers a course that is primarily organized around mindfulness and is titled Mindful Ethics: Professional Responsibility for Lawyers in the Digital Age.<sup>128</sup> This is a path-breaking, unique course developed and co-taught by two professors, Jan Jacobowitz, director of the Professional Responsibility and Ethics Program,<sup>129</sup> and Scott Rogers, founder and director of the Mindfulness in Law Program.<sup>130</sup> Rogers and Jacobowitz also co-authored many related thoughtful articles and books.<sup>131</sup>

<sup>127</sup> Email to Peter Huang (June 23, 2015, 22:44 MT) (on file with author).

<sup>128</sup> University of Miami Law School Website, *Mindfulness in Law Program*, <http://www.miamimindfulness.org/Program/Program/curriculum.html>; The Mindful Law Student, *Mindful Ethics: Professional Responsibility for Lawyers in the Digital Age*, <http://themindfullawstudent.org/> (Class website).

<sup>129</sup> Jan L. Jacobowitz, UNIV. OF MIAMI L. SCH., <http://www.law.miami.edu/faculty/jan-l-jacobowitz>.

<sup>130</sup> Mindfulness in Law Program, UNIV. OF MIAMI L. SCH., <http://www.law.miami.edu/academics/mindfulness-in-law-program>; <http://www.miamimindfulness.org/>.

<sup>131</sup> Jan L. Jacobowitz, *Cultivating Professional Identity & Creating Community: A Tale of Two Innovations*, 36 U. ARK. LITTLE ROCK L. REV. 319 (2014); Jan L. Jacobowitz & Scott L. Rogers, *Mindful Ethics: A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing Professional Identity, and Encouraging Civility*, 4 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 198 (2014); SCOTT L. ROGERS, MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL (2009); SCOTT L. ROGERS, THE SIX-MINUTE SOLUTION: A MINDFULNESS PRIMER FOR LAWYERS (2009); SCOTT L. ROGERS & JAN L. JACOBOWITZ, MINDFULNESS

My section of legal ethics and professionalism has over its five years always covered three core topics: (1) the American Bar Association (ABA) disciplinary rules of professional attorney conduct, that consist of the Model Rules of Professional Conduct (MRPC)<sup>132</sup> and the ABA's Model Code of Judicial Conduct;<sup>133</sup> (2) happiness, flow, and positive psychology applied to lawyering;<sup>134</sup> and (3) behavioral legal ethics.<sup>135</sup> The course in various years also covered some of these subjects: (4) entrepreneurship;<sup>136</sup> (5) emotional intelligence;<sup>137</sup> (6) crafting a professional identity;<sup>138</sup> (7) improving decision-making;<sup>139</sup> (8) thinking tools;<sup>140</sup> (9) problem-solving;<sup>141</sup> (10) extrinsic versus intrinsic motivations;<sup>142</sup> (11) positive communication;<sup>143</sup> (12) some business aspects of being a lawyer;<sup>144</sup> (13) human-centered-design;<sup>145</sup> and (14) crafting meaningful work.<sup>146</sup>

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& PROFESSIONAL RESPONSIBILITY: A GUIDEBOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM (2012); Scott L. Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 TOURO L. REV. 1189 (2012); Scott L. Rogers & Jan L. Jacobowitz, *Mindful Ethics and the Cultivation of Concentration*, 15 NEV. L.J. 730 (2015).

<sup>132</sup> AMERICAN BAR ASSOCIATION, *Model Rules of Professional Conduct of Contents*,

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html).

<sup>133</sup> AMERICAN BAR ASSOCIATION, *Model Code of Judicial Conduct (2011 Edition)*, [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html).

<sup>134</sup> See, e.g., NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010); DOUGLAS O. LINDER & NANCY LEVIT, *THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW* (2014).

<sup>135</sup> See, e.g., Jennifer K. Robbennolt & Jean R. Sternlight, *Behavioral Legal Ethics*, 45 ARIZ. ST. L.J. 1107, 1107 (2013) (providing the first comprehensive survey of the implications of psychology for legal ethics). See also Tigran E. Eldred, *Insights from Psychology: Teaching Behavioral Legal Ethics as a Core Element of Professional Responsibility*, 2016 MICH. ST. L. REV. (forthcoming) (on file with Journal).

<sup>136</sup> See, e.g., REID HOFFMAN & BEN CASNOCHA, *THE START-UP OF YOU: ADAPT TO THE FUTURE, INVEST IN YOURSELF, AND TRANSFORM YOUR CAREER* (2013).

<sup>137</sup> See, e.g., TAN, *supra* note 45.

<sup>138</sup> See, e.g., E. SCOTT FRUEHWALD, *DEVELOPING YOUR PROFESSIONAL IDENTITY: CREATING YOUR INNER LAWYER* (2015).

<sup>139</sup> See, e.g., CHIP HEATH & DAN HEATH, *DECISIVE: HOW TO MAKE BETTER CHOICES IN LIFE AND WORK* (2013).

<sup>140</sup> See, e.g., BENARTZI, *supra* note 124; RICHARD E. NISBETT, *MINDWARE: TOOLS FOR SMART THINKING* (2015).

<sup>141</sup> See, e.g., PAUL BREST & LINDA HAMILTON KRIEGER, *PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT: A GUIDE FOR LAWYERS AND POLICYMAKERS* (2010).

<sup>142</sup> See, e.g., Tor Wager, *Life after Gifted Education: A Reflection on what 'Giftedness' Means*, 2001, available at [http://wagerlab.colorado.edu/files/papers/tor\\_gifted\\_sub.pdf](http://wagerlab.colorado.edu/files/papers/tor_gifted_sub.pdf).

<sup>143</sup> See, e.g., MIRIVEL, *supra* note 67. See also MARJORIE CORMAN AARON, *CLIENT SCIENCE: ADVICE FOR LAWYERS ON COUNSELING CLIENTS THROUGH BAD NEWS AND OTHER LEGAL REALITIES* (2012).

<sup>144</sup> See, e.g., PAMELA BUCY PIERSON, *THE BUSINESS OF BEING A LAWYER* (2014).

<sup>145</sup> See, e.g., IDEO.ORG, *THE FIELD GUIDE TO HUMAN-CENTERED DESIGN* (2015).

<sup>146</sup> See, e.g., CAROLINE WEBB, *HOW TO HAVE A GOOD DAY: HARNESS THE POWER OF BEHAVIORAL SCIENCE TO TRANSFORM YOUR WORKING LIFE* (2016).

I lead in-class discussions of several articles about mindfulness and lawyering,<sup>147</sup> which students are assigned to read before class. We discuss the implications of two laboratory studies finding that people who are mindful were more likely to care about such internal rewards as integrity, moral identity, and honesty, as opposed to such external rewards as monetary gains.<sup>148</sup> We also listen in-class to a brief guided mindfulness practice called 3 Minute Breathing Space,<sup>149</sup> which is freely available from an online collection of guided meditations that the University of Missouri Mindfulness Practice Center offers.<sup>150</sup> We also listen in-class to one of these two three-minute guided meditations: the Body Scan Meditation<sup>151</sup> and the Body and Sound Meditation,<sup>152</sup> both freely available online from a collection of guided meditations,<sup>153</sup> which the UCLA Mindfulness Awareness Research Center provides.<sup>154</sup> We discuss in class how mindfulness fosters and sustains positive organizations,<sup>155</sup> including law schools<sup>156</sup> and law firms.<sup>157</sup>

We watch in one class meeting a film titled *Happy, the Movie*,<sup>158</sup> in part because the movie relates mindfulness to happiness. We also watch in class some brief videos that motivate students to try experiencing mindfulness.

<sup>147</sup> See, e.g., Peter H. Huang & Corie Lynn Rosen, *The Zombie Lawyer Apocalypse*, 42 PEPP. L. REV. 727, 727, 750-55, 771 (2015); Rhonda V. Magee, *Life Experience and Cognitive Science Deepen the case for Mindfulness in the Law*, ABA J., Jan. 1, 2016, 2:30 a.m. CST, [http://www.abajournal.com/magazine/article/experience\\_and\\_cognitive\\_science\\_deepen\\_the\\_case\\_for\\_mindfulness\\_in\\_the\\_law](http://www.abajournal.com/magazine/article/experience_and_cognitive_science_deepen_the_case_for_mindfulness_in_the_law); Rhonda V. Magee, *Reflecting on Our Interconnectedness: MLK offers insight into 'justice for all'*, ABA J., Mar. 2016, at 26-27, [http://www.abajournal.com/magazine/article/martin\\_luther\\_king\\_jr\\_offers\\_insight\\_into\\_justice\\_for\\_all](http://www.abajournal.com/magazine/article/martin_luther_king_jr_offers_insight_into_justice_for_all).

<sup>148</sup> Nicole E. Ruedy & Maurice E. Schweitzer, *In the Moment: The Effect of Mindfulness on Ethical Decision Making*, 95 J. BUS. ETHICS 73, 76-77 (2011).

<sup>149</sup> *Guided Mindfulness Practices*, UNIV. OF MO. SYSTEM, available at [https://www.umsystem.edu/totalrewards/wellness/mindfulness/mindfulness\\_practices](https://www.umsystem.edu/totalrewards/wellness/mindfulness/mindfulness_practices).

<sup>150</sup> *Mindfulness Practice Center*, UNIV. OF MO. SYSTEM, <http://www.umsystem.edu/curators/mindfulness>.

<sup>151</sup> *Body Scan Meditation*, UCLA MINDFUL AWARENESS RES. CTR., <http://marc.ucla.edu/mpeg/Body-Scan-Meditation.mp3>.

<sup>152</sup> *Body and Sound Meditation*, UCLA MINDFUL AWARENESS RES. CTR., <http://marc.ucla.edu/mpeg/Body-Sound-Meditation.mp3>.

<sup>153</sup> *Free Guided Meditations*, UCLA MINDFUL AWARENESS RES. CTR., <http://marc.ucla.edu/body.cfm?id=22>.

<sup>154</sup> UCLA MINDFUL AWARENESS RES. CTR., <http://marc.ucla.edu/>.

<sup>155</sup> Peter H. Huang, *Positive Institutions: Organizations, Laws, and Policies*, Feb. 20, 2016, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2735616](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2735616).

<sup>156</sup> Todd David Peterson, *The Moral Obligation of Law Schools to Address Law Student Well-Being: A Review Essay About The Happy Lawyer*, 30 NOTRE DAME J.L. ETHICS & PUB. POL'Y 67, 67 (2016).

<sup>157</sup> Anne Brafford, *Building the Positive Law Firm: The Legal Profession at Its Best*, UNIV. OF PENN. SCHOLARLY COMMONS, Master of Applied Positive Psychology Capstone Project, Aug. 1, 2014, [http://repository.upenn.edu/cgi/viewcontent.cgi?article=1063&context=mapp\\_capstone](http://repository.upenn.edu/cgi/viewcontent.cgi?article=1063&context=mapp_capstone); Martha Knudson, *Building Attorney Resources: Helping New Lawyers Succeed Through Psychological Capital*, UNIV. OF PENN. SCHOLARLY COMMONS, Master of Applied Positive Psychology Capstone Project, Aug. 2015, [http://repository.upenn.edu/cgi/viewcontent.cgi?article=1084&context=mapp\\_capstone](http://repository.upenn.edu/cgi/viewcontent.cgi?article=1084&context=mapp_capstone).

<sup>158</sup> HAPPY THE MOVIE (Emotional Content 2011), <http://www.thehappy movie.com/film/>.

The first is a 9-minute video adaptation<sup>159</sup> of David Foster Wallace's essay<sup>160</sup> and book, *This Is Water: Some Thoughts, Delivered on a Significant Occasion, about Living a Compassionate Life*.<sup>161</sup> The second is two-and-a-half-minute video about how empathy and sympathy differ.<sup>162</sup> These two videos offer a natural catalyst for a class discussion of compassion meditation, loving-kindness meditation, and related neuroscience research studies.<sup>163</sup> The third is a just over two-minute video<sup>164</sup> of author, speaker, and poet Linda Ellis<sup>165</sup> reading her inspirational poem, *The Dash*, whose title refers to the symbol “-” between the date and/or year when one is born and the date and/or year when one passes away. A recurring theme of these discussions in class is on what are we choosing to focus our attention or mindfulness. We ask if we can be more discerning in our mindfulness by expanding the range of things we are mindful about.

I conclude this discussion by quoting the answer of a student in this spring's section of legal ethics and professionalism to a question on the University of Colorado faculty course questionnaire that asks: “Please offer constructive comments to your instructor regarding your experience in this course.” The student wrote in all capitals: “THIS CLASS SAVED ME I FELT AS IF I WAS ON THE VERGE OF A BREAKDOWN WITH THE AMOUNT OF STRESS IN MY PERSONAL LIFE COMPOUNDED BY LAW SCHOOL. THIS CLASS LITERALLY FIX IT I CAN BREATHE AGAIN. THANK YOU. I WILL BE FOREVER GRATEFUL.”

#### CONCLUSIONS: META-MINDFULNESS AS HOPE

There are many related alternative definitions of mindfulness. This Article defines meta-mindfulness as mindfulness about mindfulness. So de-

<sup>159</sup> Jermal Smith, *This is Water – David Foster Wallace*, YOUTUBE (Nov. 20, 2014), <https://www.youtube.com/watch?v=pfw2Qf1VfJo>.

<sup>160</sup> David Foster Wallace, *This Is Water: Some Thoughts, Delivered on a Significant Occasion, about Living a Compassionate Life*, <http://www.metastatic.org/text/This%20is%20Water.pdf> (last visited Aug. 20, 2016).

<sup>161</sup> DAVID FOSTER WALLACE, *THIS IS WATER: SOME THOUGHTS, DELIVERED ON A SIGNIFICANT OCCASION, ABOUT LIVING A COMPASSIONATE LIFE* (2009).

<sup>162</sup> RSA, *Brené Brown on Empathy*, YOUTUBE (Dec. 10, 2013), <https://www.youtube.com/watch?v=1Ewgu369Jw>.

<sup>163</sup> See, e.g., Yoni K. Ashar et al., *Effects of Compassion Meditation on a Psychological Model of Charitable Donation*, 16 *EMOTION* 691, 691 (2016); Paul Condon et al., *Meditation Increases Compassionate Responses to Suffering*, 24 *PSYCHOL. SCI.* 2125 (2013); Helen Y. Weng et al., *Compassion Training Alters Altruism and Neural Responses to Suffering*, 24 *PSYCHOL. SCI.* 1171 (2013).

<sup>164</sup> Linda Ellis, *The Dash Poem (Read by Author)*, YOUTUBE (Feb. 10, 2012), <https://www.youtube.com/watch?v=HVLqkExH5ww>.

<sup>165</sup> Linda Ellis: Author, Speaker, Poet, <http://www.linda-ellis.com/>.

finer, meta-mindfulness is a more nuanced and richer way of thinking about and practicing mindfulness compared to just mindfulness. Meta-mindfulness offers a set of practices that law students can adopt in creating and sustaining life-long positive personal and professional transformations. Meta-mindfulness offers to at least some law students and recent law school graduates a hopeful and practical way to better cope with, deal with, or manage the inevitable anxieties, setbacks, and stresses that all forms of legal practice and life entail. Meta-mindfulness offers law students a new hope about how to improve their lives, professionally and personally, because it provides a way of learning to take more care about what occupies our attention, time, mindfulness, and lives.