

EDUCATING LAWYERS TO MEDITATE?

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I. INTRODUCTION¹

Even before Anna checked her voice messages, she felt a familiar queasiness in her belly. After a year as an associate at a mid-size firm, the red “message” light had so often led to a new “ASAP” demand, that her body had developed a habit of reacting to it with a wave of weakness that settled lightly in her stomach. Before she’d noticed, she had sucked in her breath a little and held it as she speed-dialed into her voice mail box, waiting for words on the other end of the line that might dictate another late night at the office, and ruin her plans for the evening.

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¹ “Attempting to write about mindfulness in an academic and conceptual way is in some ways antithetical to the very nature of mindfulness, which is essentially an experimental process.” SHAUNA L. SHAPIRO & LINDA E. CARLSON, *THE ART AND SCIENCE OF MINDFULNESS: INTEGRATING MINDFULNESS INTO PSYCHOLOGY AND THE HELPING PROFESSIONS* (2009). In this opening narrative, I present a fictionalized portrait of a lawyer who engages in a brief, informal contemplative practice in her office, as distinguished from a more formal method of contemplative practice. *See generally* JON KABAT-ZINN, *FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS* 431-39 (15th ed. 1990) (distinguishing formal from informal practices). At a minimum, my purpose here is to offer the reader an opportunity to reflect on the narrative and imagine its effects. Psychologists have observed that “mindfulness has to be experienced to be known.” *Id.* at 13 (internal citation omitted). The reader is encouraged, if desired, to attempt the informal techniques described and to reflect on the experience. For a more straightforward introduction to mindfulness meditation, experiment with the following description as a guide:

To begin, find a comfortable place to sit quietly, and assume a sitting posture that is relaxed yet upright and alert. Focus your attention on the breath as a primary object of attention, feeling the breathing in and breathing out, the rise and fall of the abdomen, the touch of air at the nostrils. Whenever some other phenomenon arises in the field of awareness, note it, and then gently bring the mind back to the breathing. If any reactions occur, such as enjoying what arose in your mind, or feeling irritated by it, simply note the enjoyment or irritation with kindness, and again return to the experience of breathing.

Id.

Welcome to the practice of mindfulness. For further introduction into the practice of mindfulness, *see* Deborah Callaway, *Using Mindfulness Practice to Work with Emotions*, 10 NEV. L.J. 338, 351-52 (2010) (providing instruction on mindfulness meditation as “tranquility meditation” and discussing other sources of instruction).

But just as the pressure began to build in her head, she noticed it. And she decided to stop. She placed the phone back in its cradle. She took a deep breath. And then, another. She allowed her mind to focus on the sensation of breathing in and breathing out.² Noticing the weakness in her stomach, and the distressing thoughts that had preceded it, she made a conscious choice to let the thoughts go. She placed her right hand beneath her navel, and her left hand over her heart and consciously called up the sensation of cradling someone in need. She breathed into this self-generated physical, psychological, and emotional support. Her own feelings of distress began to subside.³

The scene described above is fictionalized.⁴ But it represents one that repeats, with nominal variation, in law offices with increasing frequency. More and more, lawyers are meditating across America. What is this trend *really* all about? What are its objectives, and full implications, for legal education and the practice of law?

As the first major follow-up to the Symposium on the contemplative practice in law movement⁵ published in the Harvard Negotiation Law Review in 2002,⁶ this Article breaks new ground by deeply analyzing the implications of the

² The simplest form of contemplative practice may well be the most common among lawyers: mindfulness meditation. As discussed more fully below, mindfulness meditation is “a richly complex yet simple” exercise based on the practice of compassionately bringing one’s attention to the sensations of breathing as a means of more deeply inhabiting the present moment. SHAPIRO & CARLSON, *supra* note 1, at 5-8.

³ To return to a consideration of Anna’s situation, including a discussion of the objectives of contemplative practice for lawyers like her, see *infra* Parts II.C.a-h; see also notes 66-138 and accompanying text.

⁴ Anna is a fictionalized version of the author, a former associate in a large law firm. The descriptions are loosely based on my own experiences, but I elaborate on and embellish them in ways that make fictionalized narrative more appropriate, accurate and useful than would be first-person, auto-didactic critical ethnography of the sort I have employed elsewhere. See, e.g., Note, *The Master’s Tools, From the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863 (1993); see also Rhonda V. Magee, *Slavery As Immigration?*, 44 U.S.F. L. REV. 273 (2009).

⁵ I hesitate to use the term movement here, since, as described below, the developments described here lack the sort of leadership and continuity that sociologists tend to associate with that term. See, e.g., Robert A. Goldberg, *The Challenge of Change: Social Movements as Non-State Actors*, 2010 UTAH L. REV. 65, 65 (2010) (“A social movement is an organized group that acts with some continuity and is consciously seeking to promote or resist change.”) The term “movement” is used here in more of a lay sense, to capture a general but somewhat defined trend facilitated by a group of people acting on a rough sense of similar purpose and desired effect.

⁶ Symposium, *Mindfulness in the Law and ADR*, 7 HARV. NEGOT. L. REV. 1 (2002). In 2010, the Nevada Law Journal published a symposium on mindfulness meditation, law and alternative dispute resolution, focusing specifically on the virtue of mindfulness in managing the emotional aspects of negotiation work. See *supra* note 1 and accompanying text. This Article takes a more comprehensive view of the role of mindfulness in legal education, professional identity development, and successful practice of law—for both practitioner, law as a substantive academic

movement for contemplative practices in law. Indeed, I show here that the implications of educating lawyers in contemplative practice are much more profound than have yet been articulated. These practices have, in the contemporary discourse, been hailed for their capacity to assist lawyers in better handling the pressures and demands of lawyering on the day-to-day level—that is, they have been embraced, most-widely, as *exercises* for stress-reduction.⁷ In this Article, I show how, considered more deeply, the incorporation of these practices into legal education and the practice of law portends a fundamental reshaping of the foundations of a lawyer's sources of both *practical knowledge* and *ethical grounding*, serving as both fresh *epistemology*, and internally-generated, professionally consistent *ethics*. For this reason, I argue that contemplative practices must not only be accepted as part of the law school curriculum. Indeed, they are a necessary part of sound legal education, and should become a required component of the core curriculum. Contemplative practices in legal education must be moved, as it were, from margin to center.⁸

I begin by describing the contemplative practice movement that is emerging, taking hold, and poised to expand its reach dramatically within the legal profession over the next decade. Numerous publications for legal practitioners and law professors, a small but increasing number of new law school classes on mindfulness for legal professionals (students, professors, law school staff, lawyers, etc.), mindful mediation and contemplative lawyering, and continuing legal education at the state bar level for lawyers, mediators and judges are combining to create receptivity within the legal profession to contemplative practice as an important element of effective lawyering.⁹

Of particular importance is the fact that the rise of contemplative practice within law coincides with a new wave of critical evaluation of legal education. These critiques raise a thunderous call to improve the capacity of legal education to develop in lawyers a sense of civic professionalism and purpose, guided by sound judgment. So far, however, they have failed clearly to advance a pathway toward a workable answer.

In this Article, I argue that the contemplative practice and law movement assists, in important ways, in answering this call, and hence, provides the outlines of the pathway so far missing from the mainstream critique. Indeed, I argue that the contemplative practices movement does much more than merely specify skills missing from traditional legal education that are crucial to effective and

discipline of study, and society – a developing body of practices and, I hope, substantive law, which I call “Contemplative Law.”

⁷ See, e.g., STEVEN KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE 57-58 (1999) (quoting a successful, Boston-based corporate lawyer and practitioner/teacher of one form of contemplative practice (yoga) as follows: “What yoga does for me is that it allows me to process the stress in a certain way, a way that makes it all work for me.” The author describes the motivations of those who attend a weekly yoga class in the corporate lawyer’s firm as “to relax and learn ways to manage the stresses that buffet them throughout the week.”).

⁸ See generally BELL HOOKS, FEMINIST THEORY: FROM MARGIN TO CENTER (2d ed. 2000).

⁹ See Symposium, *supra* note 6; see also Callaway, *supra* note 1.

sustainable lawyering, including the capacity for self-reflection, emotional intelligence, and moral discernment. The movement goes much further, suggesting a new approach to the foundation of legal education—one which may better instill in young lawyers an abiding sense of an inspiring professional identity, embodying self-reflective civic engagement and practical, ethical judgment by broadening their ways of learning what they need to know to practice and to lead effectively in a changing world.

Thus, this Article provides not only description and critique, but also offers a solution to the problems identified by so many others: the grounding of legal education in contemplative practices proven to increase our awareness of the complex humanity at the center of the work of lawyering and to maximize our capacity to engage practical wisdom in the course of our service as lawyers, leaders, and human beings. In so doing, I provide the first systematic examination of the synergy¹⁰ between the movement toward contemplative practice in law and the most recent wave of legal education critiques and proposed reforms. Part II provides a descriptive, summary overview of the movement for contemplative practices in law, breaking ground by identifying eight objectives that have thus far animated the contemplative practices movement, and un-covering latent ninth and tenth objectives. However, the major contributions of this Article—pointing to the Carnegie Report’s success in calling for self-reflective lawyers, and its failure to explain how such lawyers come about; placing the contemplative lawyering movement in historical and philosophical context (and linking it, along the way, back to no less an important figure for the development of the law than the historical Socrates himself); and proposing a subtle but radical re-orientation of legal education to place the capacity for self-reflection at the core of what we mean by an educated lawyer—are carried forth by the analysis that takes off in the Article’s second half (Parts III through IV). Part III summarizes the contemporary critiques of legal education and calls for reform. Part IV analyzes the connection between contemplative practices and the movement for legal education reform, explaining how it stands to address what may be the central criticisms of contemporary legal education, from both within and outside of the academy. In Part V, I conclude with a call for greater commitment on the part of law schools to broaden and more systematically develop their embrace of the contemplative practice movement in law as the best means of laying the foundation for accomplishing the broad agenda of reform suggested by contemporary critics.

¹⁰ Synergy is defined as “combined action or operation.” *Synergy*, MERRIAM-WEBSTER ONLINE DICTIONARY. <http://www.merriam-webster.com/dictionary/> (last visited Feb. 17, 2011). This paper is one in a series in which I explore the intersections and synergies between what I call Contemplative Law and a range of critical perspectives on how traditional legal education might be improved. See *Contemplative Practice and the Renewal of Legal Education*, (work-in-progress, contribution to a symposium to be submitted to the Journal of Legal Education, on file with author), and *How Mindfulness Works for Lawyers*, (work-in-progress, on file with author), [hereinafter Magee, *How Meditation Works for Lawyers*].

II. AN OVERVIEW OF THE CONTEMPLATIVE PRACTICE MOVEMENT IN LAW

A. The Broader Contemplative Movement and its Relationship to Law

1. Contours of the General Movement

Myriad indications confirm that a broad-based contemplative practice movement is on the ascendancy in America.¹¹ By *contemplative practice*, I refer either to a personal commitment to engage, on a regular basis, in one or more contemplative practices, or to a singular contemplative practice among the many being introduced and practiced in the United States in the early twenty-first century. By *contemplative practices*, I refer to any of a wide variety of practices, with origins ranging from ancient¹² to post-modern,¹³ from deeply religious¹⁴ to wholly secular,¹⁵ that assist people in becoming more aware of thoughts, emotions, and physical states, and assist people in being more deeply present and capable of choosing their responses to stimuli in their environments.¹⁶ Ultimately, such practices can assist us in developing self-

¹¹ See Rhonda V. Magee, *Contemplation Nation: How Ancient Practices Are Changing the Way We Live* (forthcoming 2010) (unpublished manuscript) (on file with author).

¹² See, e.g., VEN U. VIMALARAMSI, *THE ANAPANASATI SUTTA: A PRACTICAL GUIDE TO MINDFULNESS OF BREATHING AND TRANQUIL WISDOM MEDITATION* (1999). Internationally-respected Vietnamese Zen Buddhist monk Thich Nhat Hanh recommends this work thusly: "If you really want to practice Buddhist meditation, you must study this text." THICH NHAT HANH, *TRUE LOVE: A PRACTICE FOR AWAKENING THE HEART* 8 (1997).

¹³ See, e.g., DANIS BOIS, *THE WILD REGION OF LIVED EXPERIENCE: USING SOMATIC-PSYCHOEDUCATION* xxvi (Helene Pennel trans., 2009) (describing "sense experiencing" as "meaning I observe myself in what I feel," and describing "somatic-psychoeducation" as "invit[ing] us to begin a dialogue with ourselves, to watch ourselves watching the world and to experience ourselves through sense perception").

¹⁴ See, e.g., FATHER LUIS DE LA PALMA, *A TREATISE ON THE PARTICULAR EXAMEN OF CONSCIENCE ACCORDING TO THE METHOD OF ST. IGNATIUS* (1952).

¹⁵ See, e.g., EKHART TOLLE, *THE POWER OF NOW: A GUIDE TO SPIRITUAL ENLIGHTENMENT* (1999); see also JUDITH ORLOFF, *POSITIVE ENERGY* (2004).

¹⁶ See *What are Contemplative Practices?*, CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, <http://www.contemplativemind.org/practices/index.html> (last visited Feb. 17, 2011):

Contemplative practices quiet the mind in order to cultivate a personal capacity for deep concentration and insight. Examples of contemplative practice include not only sitting in silence but also many forms of single-minded concentration including meditation, contemplative prayer, mindful walking, focused experiences in nature, yoga and other contemporary physical or artistic practices. We also consider various kinds of ritual and ceremony designed to create sacred space and increase insight and awareness to be forms of contemplative practice.

knowledge, as well as awareness of the psychological or emotional states of others in our midst.¹⁷

As the foregoing suggests, there are many variations and types of contemplative practices.¹⁸ “Mindfulness” or “mindfulness meditation” is a particular form of contemplative practice.¹⁹ It is, perhaps, the most widely-adopted and certainly has been the most widely studied to date.²⁰ The term “mindfulness” may also be used to refer to the state of awareness that commonly results from the practice of mindfulness.²¹ It has been studied and introduced through a variety of religious or philosophical traditions, most especially Eastern in origin,²² and has become the focus of extensive research within the fields of neuroscience and psychology.²³ The following descriptive definition is a fairly typical one among those in the literature:

Being mindful, having mindful awareness, is often defined as a way of intentionally paying attention to the present moment without being swept up by judgments. Practiced in the East and the West, in ancient times and in modern societies, mindful awareness techniques help people move towards well-being by training the mind to focus on moment-to-moment experience. . . . [F]ocusing our attention in this way is a biological process that promotes health—a form of brain hygiene—not a religion. Various religions may encourage this health-promoting practice, but learning the skill of mindful awareness is simply a way of cultivating what we have defined as the integration of consciousness.²⁴

Thus, a growing awareness of the central human capacities that are enhanced by contemplative practice has emerged and is now being supported and

¹⁷ See DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE* 239 (2000) (discussing research indicating mindfulness changes the brain’s functions in ways that support emotional and social intelligence).

¹⁸ *Id.*

¹⁹ See Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOT. L. REV. 109 (2002).

²⁰ *Id.*

²¹ Cf. SHAPIRO & CARLSON, *supra* note 1, at 4 (“What can be confusing is that mindfulness is both a process (mindful practice) and an outcome (mindful awareness).”).

²² See Ruth A. Baer, *Mindfulness Training as a Clinical Intervention: A Conceptual and Empirical Review*, 10 CLINICAL PSYCHOL.: SCI. AND PRAC. 125 (2006) (“Mindfulness is a way of paying attention that originated in Eastern meditation practices.”).

²³ See David S. Ludwig et al., *Mindfulness in Medicine*, 300 JAMA 1350, 1350 (2008) (stating “[i]n the past 30 years, interest in the therapeutic uses of mindfulness has increased, with more than 70 scientific articles on the topic published in 2007”).

²⁴ DANIEL J. SIEGEL, *MINDSIGHT: THE NEW SCIENCE OF PERSONAL TRANSFORMATION* 83 (2010). See also SHAPIRO & CARLSON, *supra* note 1, at 4 (“[O]ur intention is to present mindfulness as a universal human capacity.”).

validated by scientific research in a range of fields, but most prominently in neuroscience.²⁵

Also as indicated above, the contemplative practice movement has been characterized by both a broad approach to defining “contemplative practice,”²⁶ and a simultaneous tendency to reduce the focus for purposes of introduction and initial research to “mindfulness” or “awareness”-based meditation²⁷—definitional tendencies that are no doubt also reflected in the present discussion and analysis.

With regard to the benefits of the particular contemplative practice of mindfulness or mindfulness meditation, research is ongoing but so far indicates a number of specific positive effects.²⁸ For example, numerous scientifically-controlled research studies confirm that mindfulness meditation increases positive feeling and reduces anxiety;²⁹ one study also shows increased brain and immune functioning following an eight-week introduction to mindfulness through a training program styled after a popular model developed for application to medical patients.³⁰ This research joins a long historical record of the use of contemplative practices within religious and philosophical traditions and anecdotal indications of their success in the training of the mind and spirit.³¹ The growing body of secular or secularized methods focus on increasing the very

²⁵ Research on the effects of mindfulness has proliferated over the past ten years, resulting in an important body of empirical confirmation, and generating ongoing interest in empirical research. See generally DANIEL J. SIEGEL, *THE MINDFUL BRAIN* (2007); SIEGEL, *MINDSIGHT*, *supra* note 24. But see Baer, *supra* note 22 (pointing out that “The empirical literature on the effects of mindfulness training contains many methodological weaknesses . . .”).

²⁶ See generally Richard J. Davidson et al., *Alterations in Brain and Immune Function Produced by Mindfulness Meditation*, 65 *PSYCHOSOMATIC MED.* 564 (2003), available at <http://www.psychosomaticmedicine.org/cgi/content/short/65/4/564> (click “full text” link on right pane). Some psychologists often prefer terms such as “metacognition” or “reflection” to mindfulness, but suggest that the two terms mean the same thing.

²⁷ Some lawyers, like some psychologists, may prefer to use terms such as “metacognition” or “reflection” to mindfulness. See *supra* note 26; see also, Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 *WASHBURN L.J.* 247, 285-86 (2008), citing Kirk W. Brown & Richard M. Ryan, *The Benefits of Being Present: Mindfulness and its Role in Psychological Well-Being*, 84 *J. PERSONALITY & SOC. PSYCHOL.* 822, 822 (2003); Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 *MICH. ST. DCL L. REV.* 447, 460-61 (2003) (describing “reflection” as an important attribute of “self-regulated” or “expert” learners).

²⁸ In a forthcoming Article, I detail these findings and their implications for lawyers. See Magee, *supra* note 10, *How Meditation Works for Lawyers*

²⁹ See Davidson et al., *supra* note 26, at 569-70 (citing, *inter alia*, Jon Kabat-Zinn et al., *Effectiveness of a Meditation-Based Stress Reduction Program in the Treatment of Anxiety Disorders*, 149 *AM. J. OF PSYCHIATRY* 936 (1992); J. Miller et al., *Three-Year Follow-Up and Clinical Implications of a Mindfulness Meditation-Based Stress Reduction Intervention in the Treatment of Anxiety Disorders*, 17 *GEN. HOSP. PSYCHIATRY* 192 (1995)).

³⁰ Davidson et al., *supra* note 26, at 565-69.

³¹ See SIEGEL, *MINDSIGHT*, *supra* note 24, at 85 (“[H]ere is what modern clinical research, 2,500 years of contemplative practice, recent neuroscience investigations, and my own experience suggest: Mindfulness is a form of mental activity that trains the mind to become aware of awareness itself and to pay attention to one’s own intention. . . . [I]t teaches self-observation[.]”);

same human capacities highlighted in religious traditions—capacities for concentration, deep reflection and enhanced epistemological processing; that is to say, ways of knowing, grounded in contemplative experience.³²

³² *Id.* See also Harold D. Roth, “Against Cognitive Imperialism: A Call for a Non Ethnocentric Approach to Studying Human Cognition and Contemplative Experience” INSTITUTE FOR THE STUDY OF WORLD RELIGIONS (Mar. 20, 2008), <http://www.contemplativemind.org/programs/academic/Roth-AgainstCognitiveImperialism.pdf>.

³³ See generally *Everson v. Board of Education*, 330 U.S. 1 (1947) (holding “[n]either a state nor the Federal Government can set up a church . . . or prefer one religion over another”).

³⁴ See ARTHUR ZAJONC, *MEDITATION AS CONTEMPLATIVE INQUIRY: WHEN KNOWING BECOMES LOVE* (2009). Because students, faculty and staff of religiously-affiliated institutions also tend to hail from a diverse set of traditions, these issues are important even in the context of such schools.

³⁵ *Id.*

³⁶ See, e.g., Professor Marc Poirier, Presentation at Law and Society Conference: Is Buddhism a Religion? And does this Matter to Legal Practitioners? (May 2010).

³⁷ *Id.*

B. The Meaning of “Contemplative Practice” in Law

The core notion of “contemplative practice” in law derives from the definition of such practices common in the various wisdom traditions at the foundation of the broader contemplative practice movement. In the field of law, much of the work to develop a common understanding of what is meant by contemplative practice, and to suggest how it might apply to the practice of law, has proceeded under the auspices of the Center for Contemplative Mind in Society’s Law Program, and its San Francisco Bay Area-based Working Group for Lawyers.⁴⁹ Although its members engage in and have been influenced by practices from a variety of traditions from Judaism to Christianity, the Working Group for Lawyers has primarily adapted meditation practices from the mindfulness and insight traditions within Buddhism, under the guidance of various teachers from within the Eastern wisdom tradition.⁵⁰ The working group collaboratively developed its conception of contemplative practice through a document entitled *The Meditative Perspective*.⁵¹ In it, the concept is described as follows:

Broadly defined, a contemplative practice is any activity that quiets the mind in order to cultivate the capacity for insight. Mindfulness meditation is a powerful contemplative practice that is simple to learn and incorporate into one’s daily routine. Mindfulness meditation is cultivated mainly through the practice of quiet sitting, with focus on breathing, not repressing thinking or emotion but simply allowing it to come and go within the field of awareness. Once such a practice is established it can be applied in informal ways during the day. Its

⁴⁹ *History*, CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, <http://www.contemplativemind.org/about/history.html> (last visited Feb. 17, 2011).

⁵⁰ Zen Buddhist teacher and poet Norman Fisher, founder of the Everyday Zen Foundation, has long served as primary teacher and consultant to the Center for Contemplative Mind in Society’s Working Group for Lawyers. *See id.* The Working Group and its members have also studied with teachers from within the Buddhist tradition affiliated with Spirit Rock in Woodacre, California. *Id.*

⁵¹ Working Group on Meditation and Law, *The Meditative Perspective*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY (2004), <http://www.contemplativemind.org/programs/law/perspective.pdf>. The Center for Contemplative Mind in Society’s Law Program is currently led by Center for Contemplative Mind in Society founder Charles Halpern, who was also a founder of CUNY Law School and currently teaches a course on law and contemplative practice at the University of California’s Berkeley Law School; and, Doug Chermak, who practices environmental law in Oakland, California. The Working Group has consisted of twelve or so (mostly) law professionals (lawyers, law professors—including the author—and a former judge) who meet regularly for meditation and discussion of the intersections between contemplative practice and the practice of law.

essence is simply being fully and nonjudgmentally present with what happens, on a moment by moment basis.⁵²

Again, note the focus on mindfulness.⁵³ The movement has consciously adopted both a range of practices and a specific language to describe them and underscore their foundation in basic human capacities—most of which, as one contemplative practitioner and journalist recently put it whimsically, “we knew on our own when we were nine.”⁵⁴ Indeed, researchers in the field of neuroscience have elaborated on the concept of mindfulness as a universal human capacity, including not only the ability to bring greater attentional focus on subtle aspects of one’s experience of the outer world, but also to enhance one’s familiarity with one’s experience of one’s own inner world.⁵⁵ It is important to note, however, that while mindfulness is a capacity inherent in everyone, “deepening this capacity and becoming more reliably and consistently present requires systematic practice.”⁵⁶

Examples of contemplative practices that have been offered to and embraced by the legal community in various workshops, retreats, and continuing education programs include sitting meditation,⁵⁷ yoga,⁵⁸ tai chi,⁵⁹ qi gong,⁶⁰ and contemplative journaling, contemplative dialogue, and contemplative walking.⁶¹ A recent small-scale qualitative study confirms that lawyers meditating in the Buddhist tradition have embraced a range of both formal and informal contemplative practices, including insight meditation, “ethically-engaged attention,” the focus on developing compassion and empathy, mindful attention to communicating by telephone, yoga, etc.⁶²

⁵² *Id.* at 1.

⁵³ As noted earlier, psychologists (and some lawyers), prefer terms such as “metacognition” or “reflection” to mindfulness, but suggest that the two terms mean the same thing. See *supra* notes 26-27.

⁵⁴ Comments of participant at the conference on Contemplative Practices in America, Fetzer Institute, June 9-10 (2010) (personal notes of author).

⁵⁵ See SIEGEL, *MINDFUL BRAIN*, *supra* note 25, at xiii (recognizing that “mindfulness is often seen as a form of attentional skill that focuses one’s mind on the present” but focusing on “mindfulness as a form of healthy relationship with oneself”).

⁵⁶ SHAPIRO & CARLSON, *supra* note 1, at 19.

⁵⁷ *The Tree of Contemplative Practices*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, <http://www.contemplativemind.org/practices/tree.html> (last visited January 31, 2011).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See, e.g., TAIL OF THE TIGER, <http://www.tailofthetiger.org/> (last visited Feb. 17, 2011).

⁶² See Deborah Cantrell, *Inviting the Bell: A Preliminary Exploration of Buddhist Lawyers in the United States* 41-46 (Univ. of Colo. Law Sch., Working Paper No. 10-12, 2010), available at <http://ssrn.com/abstract=1568953> [hereinafter The Cantrell Study].

While many in the legal profession are apparently drawn to contemplative practices in search of stress management techniques,⁶³ the practices provide a bridge to deep reconsideration of how more meaningfully, ethically, and effectively to practice law in service to clients and community, and, if desired, to broader spirituality.⁶⁴ As discussed more fully below, recent criticisms of legal education and the development of professional identity highlight the need for greater attention to increasing lawyers' capacities for self-awareness and ethical, civic engagement.⁶⁵ Contemplative practices aimed at increasing these capacities among lawyers have emerged. Although, as discussed above,⁶⁶ the contemplative practices at the heart of the movement may be cultivated by and connected with any of a number of religious or philosophical worldviews, the practices themselves identify and assist in the cultivation of core human capacities.⁶⁷

A thoughtful approach to the teaching of contemplative practice in secular settings demands that educators and instructors consider such questions, and explicitly address the links between contemplative practices (such as mindfulness meditation or even yoga) and the ethics of practicing law.⁶⁸ A full exploration of those links is beyond the scope of this Article. However, it is not far out of line to suggest at this point that the ethical codes ostensibly governing the practice of law, and the service ethic that provides the basis for those codes, should be the explicit starting point for training in contemplative practice for the law student and legal professional. I will briefly return to this question of the professional ethical grounding for training law students and lawyers in contemplative practice in Part IV.

⁶³ See 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, 33-65 (2002) [hereinafter Riskin, *The Contemplative Lawyer*].

⁶⁴ See *infra* Part II.C.1.

⁶⁵ See, e.g., WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 126-60 (2007) [hereinafter EDUCATING LAWYERS].

⁶⁶ See *infra* Part II.A.2.

⁶⁷ See SIEGEL, MINDFUL BRAIN, *supra* note 25.

⁶⁸ Compare Riskin, *The Contemplative Lawyer*, *supra* note 63, at 64-5; and Leonard L. Riskin, *Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior*, 50 S. TEX. L. REV. 493 (2009) (arguing that mindfulness tends to foster ethical awareness and conduct); with Scott R. Peppet, *Mindfulness in the Law and Alternative Dispute Resolution* in Carrie Menkow-Meadow and Michael Wheeler, eds., *What's Fair? Ethics for Negotiators*, 440 (2004) (arguing that "mindfulness may lead to more deeply held ethical commitments, which in turn may prevent some forms of partisanship that are required for certain negotiation strategies.").

a. Lawyer Support

By far, the most often-cited and least controversial objective for introducing mindfulness training and education to lawyers and law students has been that of providing training in a means of self-support for handling the stresses of life in the law. “Stress reduction” is commonly cited in marketing of contemplative practices trainings for lawyers as a key benefit of practicing mindfulness and meditation.¹¹⁴ Many have pointed out that the development of such practices can assist lawyers in sustaining themselves through stressful years in practice.¹¹⁵

orientation to first-year law school students. Personal notes, on file with author. *See also supra* notes 78-79.

¹⁰⁹ *See* discussion *infra* Part II.C.1.f.

¹¹⁰ *See* discussion *infra* Part II.C.1.g.

¹¹¹ *See* discussion *infra* Part II.C.1.h.

¹¹² *See* SHAPIRO & CARLSON, *supra* note 1, at 8-9.

¹¹³ *Id.* Differences in personality preferences and types among contemplative practice adherents, lawyers, and law students may also be reflected here. *See* ISABEL BRIGGS MYERS & PETER B. MYERS, *GIFTS DIFFERING* (1995) (discussing typical law students and lawyer personality type).

¹¹⁴ *See, e.g.*, Draft Promotional Brochure, “Meditation, Mindfulness, and the Practice of Law,” a program of the Arizona Women Lawyers Association—Maricopa Chapter and the Arizona State Bar Member Assistance Program, June 15, 2011 (on file with author) (inviting interested legal professionals to “[j]oin our faculty to discuss how meditation and mindfulness can reduce your stress levels” and to hear panelists discuss “recent studies in meditation-based stress reduction”).

¹¹⁵ *See, e.g.*, Riskin, *The Contemplative Lawyer*, *supra* note 63, at 8.

Returning to Anna's office, we can see an example of how the everyday components of a lawyer's work life less are stressful and may lead to unwholesome means of managing that stress, and how mindfulness might help:

Some late afternoons, Anna was tempted to ignore the message light on her phone until morning, but worried if she did so she might miss something important, and jeopardize her job. When she was really feeling anxious, she dreaded being put on the spot by either clients or her supervising attorneys. She found herself enjoying her work less and less. She began to procrastinate on work due, or daydream when she should be reading a case or documents in the file. Alternatively, she would rush through her work, and more and more, she looked forward to a drink with dinner just to unwind.¹¹⁶

This time, recalling her training in mindfulness meditation at a recent Continuing Legal Education program,¹¹⁷ Anna took another deep breath. She slid back into her chair, and planted her feet on the floor beneath her. She gently allowed her breathing to settle into a comfortable and natural rhythm. On the next in-breath, she sensed into the support in her present experience, beneath her and all around: support manifested by the cool sensation of the breath entering her body, and by the firm sensation of her feet on the ground, connecting her to the ever-present earth.

After pausing to meditate, Anna found herself more able to stop and take a break when needed. She was able to more deeply concentrate on her communications with others, her case files, and to think more clearly. Not only did she feel she was better able to sense and manage her own emotions, she also felt she was more attuned to the needs of her clients and supervising attorneys. She had more patience for reading through the comments of her supervising

¹¹⁶ Studies routinely indicate that lawyers suffer a high incidence of alcoholism and other substance abuse. See, e.g., Rick B. Allan, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?*, 31 CREIGHTON L. REV. 265, 268-69 (1997) ("An ABA survey in California and New York determined that '50-70 percent of all disciplinary cases involved alcoholism.' The statistics may be much higher than recent estimates because of the lack of uniformity of record keeping. A 1986 study by the Oregon State Bar Professional Liability Fund of 100 lawyers who entered its lawyer assistance program for alcohol or drug abuse therapy, established that 61 percent of the lawyers had disciplinary complaints and 60 percent had malpractice suits filed against them."). See also David Mann, *The Substance Abusing Attorney: A Problem in Search of a Solution*, THE TRIAL LAWYER 13 (Summer 2010), http://www.otherbar.org/Trial_Lawyer_summer_2010_01E.pdf ("It is estimated that approximately 8-10% of the general population suffers from the disease of chemical dependency. According to the American Bar Association, the corresponding estimate for lawyers is nearly double, between 15-18%. (In approximately 50-70% of cases in which lawyers face disciplinary charges, alcoholism and/or addiction is involved)."

¹¹⁷ As indicated above, mindfulness meditation and other forms of contemplative practice are being introduced with greater frequency through CLE programs at the state and local bar levels. See *supra* notes 85-87 and accompanying text.

attorneys, and she was better able to think and speak well on her feet. She began to appreciate some of the subtle aspects of her job that she sometimes overlooked. Gradually, she appreciated the work more, and her overall attitude became more positive. She felt less need of a drink to relax at the day's end, and was less irritable with her loved ones.

b. More Effective and Ethical Lawyering

For many, if not most, participants in the contemplative practice movement, the best justification for introducing lawyers to the self-supporting practices promoted by the contemplative practice movement is that these practices assist lawyers in being more effective and skillful practitioners of law.¹¹⁸ It should be readily apparent that better support for lawyers in dealing with stress may assist them in making more effective and wise choices, including those that distinguish both good lawyering from bad lawyering, and ethical from unethical lawyering.¹¹⁹ Here we are examining the connection between contemplative practice and lawyers' actions to uphold the existing ethical codes of the profession. In Part IV, I consider the question of the relationship of contemplative practice and ethics from a more fundamental standpoint, arguing that contemplative practices provide a source for the internal generation of a "universal ethics," and the self-regulation that makes applying such ethics consistently possible.

c. Better Client Relations and Better Client Service

Linked with more effective and ethical lawyering is the objective of improving client service. Put simply, providing self-support for lawyers ultimately may be one of the best means of providing better service to clients. Once again, a look at Anna's situation helps us consider how stress negatively affects client relationships, and how mindfulness might assist in improving them:

Perhaps it was another message from Linda, the client contact at a multinational insurance corporation who'd left her a message earlier in the afternoon. Anna's law firm had long represented the insurance company, and she was spending more than half her time working on several matters for the same client. She had become accustomed to terse phone calls or emails calling for aggressive tactics against her opposing counsel,¹²⁰ and so had developed a habit of responding to her calls via email rather than by phone. Recalling her intention to practice mindfulness informally throughout her day,¹²¹ she

¹¹⁸ See Riskin, *The Contemplative Lawyer*, *supra* note 63, at 59-61.

¹¹⁹ *Id.* at 64-5; Krieger, *supra* note 27, at 267. *But see* Peppet, *supra* note 68 (questioning the fit between mindfulness and the vision of many of "the lawyer's role.")

¹²⁰ *Id.* at 259.

¹²¹ See *supra* note 2 and accompanying text (describing formal and informal mindfulness practices).

took a moment to imagine Linda in her office, pressured by her own boss, feeling the need for Anna's support.

Just then, the phone rang. Anna noticed that the incoming phone number was, indeed, Linda's. Anna took a deep breath. She decided to answer the call, and made a promise to herself that she would maintain a sense of herself as grounded and supported. She found that she could listen without becoming more anxious, and that she could answer one of Linda's questions, and would be able to get back to her the next day about another. By the end of the conversation, not only had she tempered Linda's anxiety for the moment, but she had also learned that for a variety of reasons, Linda was particularly concerned about making a good impression on her boss in overseeing this case, and this had made her more nit-picky than usual. Suddenly, Linda wasn't just an unreasonable client. She was a human being, and one whose own work stress Anna knew she had managed to ease, simply by offering a few well-chosen words when she needed them.

d. Lawyer Transformation

Another seldom explicitly articulated objective of the contemplative practice movement is the transformation of lawyers' sense of themselves and the development of professional identities that encompass more meaningful and sustaining ways of being in their work. Assisting lawyers in developing better judgment,¹²² mindfulness, and other contemplative practices may ultimately assist lawyers in becoming better, more capable people.¹²³

In *From "The Art of War" to "Being Peace,"* co-author Margaretta Lin discussed her transformation from a lawyer seeking the most effective strategies for "waging war" against her opponents, to one for whom the contemplative practice and teachings of engaged Buddhism and the study of the life work of Martin Luther King, Jr. served as a personal guide for social justice work.¹²⁴ One

¹²² Riskin, *The Contemplative Lawyer*, *supra* note 63, at 65 (citing KRONMAN, *supra* note 107); Krieger, *supra* note 27, at 139-40 (discussing effects of meta-cognition or mindfulness in increasing access to morality, conscience and caring, and "enables adaptive choice-making regarding behaviors, attitudes, and desired outcomes" and lead to "increased integrity.")

¹²³ Krieger, *supra* note 27, at 140 (discussing mindfulness as a means of reducing prejudice and creating greater openness to community). *Cf.* Harris et al., *supra* note 88, at 2077 ("[M]indfulness can transform lawyers and communities alike as we work together toward a more just and equitable future.").

¹²⁴ Harris et al., *supra* note 88, at 2114 (speaking of the teachings of Thich Nhat Hanh, Lin writes: "What began as helpful guidance for personal meditation turned into an appreciation for how the teachings of engaged Buddhism could guide my social justice work"). Lin also writes: "[A]nother 'bible' that saw me through these times were the audiotapes of Dr. King's autobiography." *Id.* For some, this transformation has spiritual implications. *See, e.g.*, GEORGE W. KAUFMAN, *THE LAWYER'S GUIDE TO BALANCING LIFE & WORK* 179 (2d ed. 2006) (describing mindfulness as a quality of spirituality: "When we put our ordinary activities through the crucible of self-awareness, we embark on a spiritual path.").

need not be a progressive or community-lawyer, however, to experience the transformative potential of contemplative practice.

Anna knew that most of the insured small businesses against which she litigated on behalf of her insurance company client had at least a colorable claim for coverage under the terms of their policies. On the other hand, there was exclusionary language in their insurance contracts. Though the terms could be considered ambiguous, the company reasonably argued that the provisions excluded such claims. As she incorporated contemplative practices into her day, she began to see more of the bigger picture—the work had an impact that went beyond the narrowest and most adversarial view of her clients' cases. She began to look for ways of helping her clients assess their cases with a view toward the full range of their objectives. More often than had been the case, she was able to help them arrive at a less aggressive position, seeing doing so as in their overall best interests.¹²⁵

¹²⁵ Compare Harris et al., *supra* note 88, at 2114 (“[The teachings of engaged Buddhism and study of the life of Dr. King] were reminders to me that although we were in pitched battle, it was essential to remain principled, to speak to the merits of the situation, and to allow the integrity of what we were fighting for to serve as our predominant public message. Combined with this guidance and meditation, there were times when I was able to see our interconnectedness, and the potential for both great happiness and cooperation with even our opposition.”).

¹²⁶ Email from Cheryl Conner to Rhonda V. Magee, author (June 2010) (on file with author).

¹²⁷ See *supra* note 80 and accompanying text.

¹²⁸ See University of Miami’s Mindful Lawyer orientation program, under the direction of Scott Rogers.

¹²⁹ Admittedly, this encouragement itself has been subtle. See Krieger, *supra* note 27, at 310 (“A subtle change in approach to the teaching of legal analysis, through the application of perspective and awareness—cognitive framing and metacognition—can immediately and substantially [eliminate the “negative impacts of first year classes.”]). *Id.* at 285.