Meta-Mindfulness: A New Hope

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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-referred British Journal of American Legal Studies at pages 297-347 [henceforth, *Tiger Cub*].¹ 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.”² 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 form³ (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*⁴). Amy Chua,⁵ who is the John M. Duff, Jr. Professor of Law at Yale Law School⁶ and the author of the best-selling, controversial book⁷ that partially inspired the title and writing of *Tiger Cub*, emailed that she found *Tiger Cub* to be “moving, insightful -- and funny!”⁸

³ Huang, supra note 1, at 321.
⁴ *Star Trek: Devil in the Dark*, (NBC television broadcast, Mar. 9, 1967).
⁶ Id.
⁸ 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. 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. In American academia, there is renewed interest about Chinese philosophy. 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. Puett and freelance journalist Christine Gross-Loh recently co-authored a book based on that course.

Jin Li, a professor of education and human development at Brown University, researches about how an East Asian virtue model of learning to transform and perfect oneself morally and socially fundamentally differs from a Western mind model of learning to cultivate the mind to understand and master the world. 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. 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. Finally, she analyzes how these different views of learning

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16 JEN LI, CULTURAL FOUNDATIONS OF LEARNING: EAST AND WEST 56, Figure 2.2 (2012).

17 Id. at 36, Figure 2.1.

18 Id. at 35-55.

19 Id. at 21-35.
influence how people and societies approach formal education, also known as schooling, and informal education, also known as parenting.

In 2014, Amy Chua and Jed Rubenfeld, Robert R. Slaughter Professor of Law at Yale Law School, 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. 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. 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.”

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. 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

20 Id. at 187-222.
25 Id. at 945.
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.27 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”28 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 everyday29 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.”30 Clause 6 of the contract about “immediately in a respectable state”31 enthusiastically greeting any guests and conversing with them in the living room32 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.33 To be sure, the old and tired refrain that law schools teach students to “think like lawyers” has always had its critics.34 Many
people, including some law school professors, and popular media today question whether a legal education makes any economic sense. Answering this question requires estimating a legal education’s costs and benefits, 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.”

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. 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!”


See, e.g., BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (2012).


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, 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. Tiger Cub emphasized teaching law students about judgment and decision-making, emotions and emotional intelligence, and character strengths, ethics, and professionalism. 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.

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. Since Tiger Cub was published, the field of positive education, which applies positive psychology to education, has flourished. At several points in the article, there are sug-

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41 See, e.g., Nancy B. Rapaport, Rethinking U.S. Legal Education No More “Same Old, Same Old”; 45 Conn. L. Rev. 1409, 1409 (2013).
43 Huang, supra note 1, at 305-09.
44 See, e.g., JUDGMENT AND DECISION MAKING AS A SKILL (Mandeep K. Dhami et al. eds., 2013).
45 See, e.g., CHADE-MENG TAN, SEARCH INSIDE YOURSELF: THE UNEXPECTED PATH TO ACHIEVING SUCCESS, HAPPINESS (AND WORLD PEACE) (2014).
46 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).
50 Id. at 78–97.
gestions that joy should be a goal in life, education, and parenting, and since Tiger Cub, a lot more has been written about finding joy.

Positive psychology is related to mindfulness. At several points in Tiger Cub, there also are brief discussions about mindfulness. 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. I now appreciate how mindfulness practice can help law students flourish. I wrote this Essay in response to a March 2016 email invitation from University of Richmond Law School Professor Shari Motro. We met virtually by email in May 2013, 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. 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. In August of 2016, University of Denver Law School professor Debra Austin and I co-organized a related conference, Mindfulness and Thriving Legal Practices.

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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52 Huang, supra note 1, at 301, 303, 311, 319-20.
55 Huang, supra note 1, at 343-44, 346.
56 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).
58 Email from Shari Motro, Professor of Law, to author (Mar. 24, 2016, 11:29 MT) (on file with author).
59 E-mail from Martha Ruch on behalf of Charles Halpern, to author (May 15, 2013, 13:39 MT) (on file with author).
law teaching. 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.” 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.”

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, written by University of Arkansas at Little Rock professor of speech communication and interim chair of the department of criminal justice Julien C. Mirivel. 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.” Teaching is akin to and an aspect of parenting. It should be unsurprising that practicing mindfulness helps improve teaching and parenting.

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

64 Email from Shari Motro, to author (Mar. 24, 2016, 11:29 MT) (on file with author).
65 Email from Kassie Schroth to Shari Motro (Mar. 23, 2016, 13:12 MT) (on file with author).
66 Id.
68 Julien Mirivel (Interim Chair), UNIV. OF ARK. AT LITTLE ROCK, DEPT. OF CRIM, JUST., xhttp://ualr.edu/criminaljustice/faculty/julien-mirivel/ (last visited Aug. 20, 2016).
69 University of Arkansas at Little Rock, Faculty Excellence: Julien C. Mirivel, YOUTUBE (Apr. 15, 2011), https://www.youtube.com/watch?v=V3osVIV-jd0.
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,72 and creator of the famous Mindfulness Based Stress Reduction program,73 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.”74 Ellen Langer, Harvard University social psychology professor,75 defines mindfulness as “the process of actively noticing new things, relinquishing preconceived mindsets, and then acting on the new observations.”76 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.”77 For ex-

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

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.” 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.”

A number of smartphone apps facilitate the practice of meditation. In addition to contemplative meditation practice, mindfulness can also occur through practicing such popular and well-known forms of physical movement as qigong, tai chi, and yoga.

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.”

78 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).
80 Id.
81 Id.
85 See e.g., HALLIE NEUMAN LOVE & NATALIE MARTIN, YOGA FOR LAWYERS: MIND-BODY TECHNIQUES TO FEEL BETTER ALL THE TIME (2015).
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 Zazen, but is presented in basic terms divested of any religious or overtly spiritual/metaphysical vestiges and vocabulary.”

There are many introductions to mindfulness in the fields of business, conflict resolution, negotiations, and the law.

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 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 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.”

I had been reading and thinking about cognitive economics that is defined to be “the economics of what is in people’s minds.” One of the central themes of cognitive economics is “finite cognition (often misleadingly called “bounded rationality”).” “Finite cognition means something more

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87 Hesse, supra note 79.
92 Email from Doris Cheung to author (May 3, 2016, 22:36 MT) (on file with author).
93 Email from Peter H. Huang to Doris Cheung (May 3, 2016, 15:34 MT) (on file with author).
94 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).
96 Id. at 167, 172–73.
than just imperfect information: it means finite intelligence, imperfect information processing, and decision-making that is costly.\textsuperscript{97} 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.”\textsuperscript{98}

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.\textsuperscript{99} People often overthink trivial decisions and get stuck in decision quicksand.\textsuperscript{100} Spending precious energy and time being mindful about inconsequential or trivial decisions is not an efficient allocation of scarce cognitive and mental resources.\textsuperscript{101} 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.\textsuperscript{102}

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 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.

\textsuperscript{97} Id. at 172.
\textsuperscript{98} Id. at 173.
\textsuperscript{100} See, e.g., Aner Sela & Jonah Berger, Decision Quicksand: How Trivial Choices Suck Us In, 39 J. CONS. RES. 360, 360 (2012).
\textsuperscript{101} 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.
\textsuperscript{102} 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. 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.” 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. 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.

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, some law professors do not know or learn about ethical, neuroscience, philosophical, and psychological aspects of mindfulness.


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,\textsuperscript{108} brain gray matter density,\textsuperscript{109} creativity,\textsuperscript{110} working memory capacity,\textsuperscript{111} and Graduate Record Examination performance.\textsuperscript{112} Mindfulness also reduces anxiety,\textsuperscript{113} mind wandering,\textsuperscript{114} and stress.\textsuperscript{115} We consider how mindfulness improves decision-making,\textsuperscript{116} including decisions about what level of care to choose. We also discuss happiness measures of tort damages.\textsuperscript{117} Finally, we discuss how what students pay attention or are mindful about relates to their authentic happiness, flow, positive psychology, and subjective well-being.\textsuperscript{118}

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.\textsuperscript{119}

\textsuperscript{108} See, e.g., Sara W. Lazar et al., \textit{Mindfulness Experience is Associated with Increased Cortical Thickness}, 16 \textit{NeuroReport} 1893, 893 (2005).


\textsuperscript{112} Id.


\textsuperscript{114} See, e.g., Mrazek et al., supra note 112, at 776.


\textsuperscript{118} See, e.g., Peter H. Huang & Rick Swedloff, \textit{Authentic Happiness and Meaning at Law Firms}, 58 \textit{Syracuse L. Rev.} 335, 348 n.89, 349 n.93 (2008).

\textsuperscript{119} 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, increase resilience, and reduce stress. We cover an article about how psychologically informed behavioral economics and happiness economics improves employment discrimination law. That coverage offers a springboard for a discussion of how mindfulness can mitigate implicit bias. 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,” and at all stages of people’s decision-making processes. 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, 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


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

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. This is a path-breaking, unique course developed and co-taught by two professors, Jan Jacobowitz, director of the Professional Responsibility and Ethics Program, and Scott Rogers, founder and director of the Mindfulness in Law Program. Rogers and Jacobowitz also co-authored many related thoughtful articles and books.

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127 Email to Peter Huang (June 23, 2015, 22:44 MT) (on file with author).
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) and the ABA’s Model Code of Judicial Conduct; (2) happiness, flow, and positive psychology applied to lawyering; and (3) behavioral legal ethics. The course in various years also covered some of these subjects: (4) entrepreneurship; (5) emotional intelligence; (6) crafting a professional identity; (7) improving decision-making; (8) thinking tools; (9) problem-solving; (10) extrinsic versus intrinsic motivations; (11) positive communication; (12) some business aspects of being a lawyer; (13) human-centered-design; and (14) crafting meaningful work.

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138 See, e.g., CHIP HEATH & DAN HEATH, DECISIVE: HOW TO MAKE BETTER CHOICES IN LIFE AND WORK (2013).

139 See, e.g., BENARTZI, supra note 124; RICHARD E. NISBETT, MINDWARE: TOOLS FOR SMART THINKING (2015).

140 See, e.g., PAUL BREST & LINDA HAMILTON KRIEGER, PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT: A GUIDE FOR LAWYERS AND POLICYMAKERS (2010).


142 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).


145 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, 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. We also listen in-class to a brief guided mindfulness practice called 3 Minute Breathing Space, which is freely available from an online collection of guided meditations that the University of Missouri Mindfulness Practice Center offers. We also listen in-class to one of these two three-minute guided meditations: the Body Scan Meditation and the Body and Sound Meditation, both freely available online from a collection of guided meditations which the UCLA Mindfulness Awareness Research Center provides. We discuss in class how mindfulness fosters and sustains positive organizations, including law schools and law firms.

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

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The first is a 9-minute video adaptation\(^{159}\) of David Foster Wallace’s essay\(^{160}\) and book, *This Is Water: Some Thoughts, Delivered on a Significant Occasion, about Living a Compassionate Life*.\(^{161}\) The second is two-and-a-half-minute video about how empathy and sympathy differ.\(^{162}\) These two videos offer a natural catalyst for a class discussion of compassion meditation, loving-kindness meditation, and related neuroscience research studies.\(^{163}\) The third is a just over two-minute video\(^{164}\) of author, speaker, and poet Linda Ellis\(^{165}\) 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-

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

\(^{160}\) 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).

\(^{161}\) David Foster Wallace, *This Is Water: Some Thoughts, Delivered on a Significant Occasion, about Living a Compassionate Life* (2009).


\(^{163}\) 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).

\(^{164}\) Linda Ellis, *The Dash Poem (Read by Author)*, YOUTUBE (Feb. 10, 2012), https://www.youtube.com/watch?v=HVLqExH5ww.

fined, 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.