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MINDFULNESS IN LEGAL ETHICS AND PROFESSIONALISM*

Peter H. Huang**

Mindfulness involves paying attention with curiosity in an intentional, open, and compassionate way to life as it unfolds moment to moment. Law students, lawyers, law professors, legal clients, and indeed all people can improve their lives through mindfulness. Mindfulness can lead to individual benefits and personal transformation. Mindfulness can also lead to societal benefits and social change. This invited symposium contribution exemplifies how mindfulness can facilitate the positive personal and professional development of law students by presenting excerpts of law students' answers discussing mindfulness to questions from the final examination of the course: Legal Ethics and Professionalism. Notably, none of the questions asked explicitly about or specifically referred to mindfulness.

Empirical and experimental research demonstrates that many people are motivated to, and can, learn to practice mindfulness.¹ Law students, lawyers, law professors, legal clients, and indeed all people can improve their lives through mindfulness. Mindfulness not only can lead to individual benefits and personal transformation in many domains of life, including at work,² mindfulness also can lead to social change³ and

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1. See generally Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUS. L. REV. 63 (2017).

2. See generally LEAH WEISS, *HOW WE WORK: LIVE YOUR PURPOSE, RECLAIM YOUR SANITY, AND EMBRACE THE DAILY GRIND* (2018).

community benefits.⁴ Mindfulness has the potential and power to improve people's lives.

I have written much elsewhere about how mindfulness can improve decision-making by law students, lawyers, and others.⁵ This invited symposium contribution complements those articles by offering some law students' reflections about mindfulness in their own voices and words. This invited symposium contribution demonstrates how mindfulness can facilitate the positive personal and professional development of law students by presenting excerpts of law students' answers discussing mindfulness to questions from the final examination of the course: Legal Ethics and Professionalism.⁶ Notably, the questions neither ask explicitly about nor specifically refer to mindfulness.

My spring 2016 section of Legal Ethics and Professionalism in-class final examination included these questions:⁷

- (1) Reflect upon three insights about legal ethics and/or professionalism that you learned from at least one of our non-guest speaker classes.
- (2) Reflect upon three insights about legal ethics and/or professionalism that you learned from at least one of our guest speaker presentations.
- (3) Provide and reflect upon your own example (not discussed in class) of how you can apply a concept that you learned from our classes or readings that will improve your legal ethics and/or professionalism decision-making.

Out of the thirty-eight students in the course, some (four students, or 10.5% of the class) did not discuss mindfulness in any of their answers. Many (eleven students, or 28.9% of the class) discussed mindfulness in one

3. See generally GRETCHEN KI STEIDLE, *LEADING FROM WITHIN: CONSCIOUS SOCIAL CHANGE AND MINDFULNESS FOR SOCIAL INNOVATION* (2017).

4. See Angela Harris, Margaretta Lin & Jeff Selbin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073 (2007).

5. See, e.g., Peter H. Huang, *Boost: Improving Mindfulness, Thinking, and Diversity*, 10 WM. & MARY BUS. L. REV. 139 (2018) (analyzing how mindfulness reduces cognitive biases and boosts decision-making); Peter H. Huang, *How Improving Decision-Making and Mindfulness Can Improve Legal Ethics and Professionalism*, 21 J.L. BUS. & ETHICS 35, 59-75 (2015) (analyzing how mindfulness improves legal ethics and professionalism); Peter H. Huang & Corie Rosen Felder, *The Zombie Lawyer Apocalypse*, 42 PEPP. L. REV. 727, 750-55 (2015) (analyzing how mindfulness reverses lawyer zombification); Peter Henry Huang, *Happiness Studies and Legal Policy*, 6 ANN. REV. L. & SOC. SCI. 405, 420-22 (2010) (analyzing benefits of mindfulness meditation).

6. Peter H. Huang, *Meta-Mindfulness: A New Hope*, 19 RICH. J.L. PUB. INT. 303, 320-23 (2016) (discussing this course); Peter H. Huang, *Adventures in Higher Education, Happiness, and Mindfulness*, 7 BRIT. J. AM. LEGAL STUD. 2 (forthcoming Autumn 2018) (providing additional discussions and mindfulness resources).

7. All questions and student answers are on file with the author.

of their answers, even more (fourteen students, or 36.8% of the class) discussed mindfulness in two of their answers, and again many (nine students, or 23.6% of the class) discussed mindfulness in all three of their answers.

I provide below a sample of excerpts from students' answers that discuss mindfulness, to each of the above three questions. These reflections are representative of other students' answers in the sense that many other students' answers were quite similar in the insights that students discussed.

I. REFLECT UPON THREE INSIGHTS ABOUT LEGAL ETHICS AND/OR PROFESSIONALISM THAT YOU LEARNED FROM AT LEAST ONE OF OUR NON-GUEST SPEAKER CLASSES.

Here is a student answer to question one:

Mindfulness is traditionally not integrated into the law school curriculum. In one class, you told us that you went to law school to find out what kind of damage they were doing to us so that you could become a professor and alleviate some of that. Prior to this class, I did not think about the psychological effects that law school was having on me and the importance of paying attention to that and developing coping mechanisms.

Our discussions on mindfulness were very timely for me, I only wish that I learned and employed some of these techniques earlier in my law school career. I was skeptical about the benefits of mindfulness but then I started doing yoga for the first time this year. That one hour that I give myself to link movement to breath and just be present in the moment is wonderful. Still, mindfulness is challenging. It can feel overwhelming to carve out time to meditate or go to yoga for an hour. I still feel like sometimes I am "doing it wrong." But I recognize now that mindfulness is hard to develop. Even though it can be challenging, I see the importance of investing time to being mindful and living in the moment, not only for my physical well-being but also for spiritual and emotional well-being.

A second student answer to question one:

Lawyers are faced with all sorts of important decisions throughout their careers. Though it is easy to become a zombie lawyer who mindlessly goes through his or her day feeling relatively unsatisfied, this mindlessness and dissatisfaction can ultimately take a toll on me by causing me to feel depressed, and can even hurt my clients. By being appropriately mindful, emotionally intelligent, and attuned to the true sources of satisfaction, I can combat the zombie lawyer effect to become a happy, healthy, and ethical professional.

Mindfulness is very important to legal ethics and professionalism. A lot of poor ethical decisions result from being unaware, not considering the possible outcomes, or making decisions on autopilot. Mindfulness can combat these problems, by allowing someone to pay attention to his or her thoughts and surroundings in a caring, discerning, and openhearted way. Mindfulness can help combat ethical blind spots, slippery slopes into unethical behavior, and ethical fading. Unfortunately, people are usually over-optimistic about their abilities to fix or manage ethical problems. Mindfulness can remind a practitioner to carefully consider all aspects of a legal or ethical dilemma. Additionally, it is difficult to detect when conduct or situations degrade gradually. What started out as a small lapse in judgment can quickly snowball into a much bigger ethical problem without the practitioner realizing. Mindfulness can create a stopping point along this slope, allowing the practitioner a chance to stop, take a breath, and analyze the situation. Routine decisions, like slippery slopes, can also easily go unnoticed as a potential ground for ethical problems. It is easy to stop considering the ethical aspects of everyday decisions, such as billing hours or the contours of the attorney-client relationship. Mindfulness gives the practitioner a reminder to stop thinking about just the self-centered concerns (“How much money can I bill this client for?”) and instead consider the feelings of others (“What can I do to be the best representative possible for my client?”).

A third student answer to question one:

Insight #0.5: Preface to Exam.

I subscribe to the notion that the happier we are and the less stressed out we are, the more likely we are to behave ethically. As such, many of my responses discuss routes to happiness, mindfulness, or personal fulfillment without explicitly stating the connection to ethical and professional conduct. After having studied this topic with you this semester, and having read texts like the Good Lawyer, The Happy Lawyer, and The Zombie Lawyer Apocalypse (to name just a few), I assume that we can take that connection for granted.

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These last three or four days have been some of the most enjoyable in all of law school. To spend days on end—when most law students are memorizing rules of Evidence or Securities—studying mindfulness, meditation, and happiness, was the greatest gift you could have given me.

Insight #2: Embrace Mindfulness.

“Mindful” was just a buzzword before this class. It was a word I wrote off as one for Boulder yogis and other folks that don’t believe in science. I was wrong, and in part, because I already engaged in various types of mindful practices—I just didn’t associate them with “mindfulness.” I can’t tie this to a specific class, because it was an

underlying theme in so many classes, but the main insight I gleaned was that mindfulness means different things to different people, but it almost always embraces the simple concept of being aware of your surroundings and living in the moment. This idea has universal appeal, and should not be written off. It's time to de-stigmatize "mindfulness"!

Insight #3: Meditate.

I've tried different types of structured meditation in the past, and always found myself confused and unmoved. I thought meditation meant "clearing your mind of all thoughts." My mind is way too hyperactive for that! Meditation is not trying to empty your mind—it's not trying to be blank—the point is to be aware.

Another student answer to question one:

You mention in one of your articles that many students' biggest takeaway from learning about positive psychology/mindfulness/happiness is the distinction of what ethics rules are, in contrast to how to be more ethical. This was certainly the case for me. Learning tools to help make ethical decisions that I can actually use in practice, as opposed to memorizing the model rules (and stopping there), I now realize, is truly the key to ethical decision-making.

For example, several tools I learned in this class will help me mitigate the effect of cognitive biases. By practicing mindfulness, I can become more aware of my own self-centered thoughts and tendencies, while at the same time, observing such tendencies from a detached point of view. By observing these things at a distance, I can consciously consider the strength and merit of the bias, and adjust accordingly. Specifically, using the STOCK technique: Stop; Take a Breath; Observe your experience in terms of your mindset, feelings, and potential biases; Consider your intention and whether you want to keep or change it; and to Keep going after making adjustments. By employing this tool as a threshold step in situations with potential ethical issues, I feel confident that I will mindfully assess the situation before I act on it (engaging my "System two" brain) and will ultimately make better decisions.

A final student answer to question one:

First, I would like to reflect upon the idea of mindfulness. I am not someone who before this ethics class thought often about mindfulness and how it would affect me in my future as a lawyer. I always assumed that to be a successful lawyer I would have to study as hard as I could and learn as much as I could in law school. Now, however, I learned that being a mindful lawyer is just as, if not more important. To me, mindfulness means being aware of yourself and your environment during whatever moment you are in. In "Making the Case for Mindfulness and the Law" by Rhonda Magee, she describes mindfulness as "paying attention, in a

particular way, with an attitude of nonjudgment, and with the intention of increasing one's capacity for awareness in the present moment." I believe that if your intentions are being aware in the present moment, you will be more ethical, by assessing how your present actions will affect your client and yourself in the future. In addition, if you have an attitude of nonjudgment, you are able to treat each client's problem with an open mind, which will lead to more professionalism.

II. REFLECT UPON THREE INSIGHTS ABOUT LEGAL ETHICS AND/OR PROFESSIONALISM THAT YOU LEARNED FROM AT LEAST ONE OF OUR GUEST SPEAKER PRESENTATIONS.

Here is a student answer to question two:

I learned I can be a better lawyer by giving myself six minutes each day to be mindful. Doing this will increase my productivity, self-esteem, and eliminate distraction, which will guide me in making more ethical decisions.

Here is a second student answer to question two:

I enjoyed X's talk on "Mindfulness and the Law." X's need for mindfulness came when she was doing capital work, where her stress took a toll on her. Specifically, when she had a case where a juvenile was charged with murder, X responded by having panic attacks. X was honest about her stress and made an admission that many of us are unwilling to make, that "it takes a village to manage your stress," and it's ok[ay] to seek help. She admitted that as lawyers, we tend to ignore secondary trauma and that especially in the criminal legal community, there's a notion that lawyers have to be "macho" about the pain. To manage her stress, X chose mindfulness, which helped give her peace. A motivation for her practicing mindfulness was that she was also part of a mindfulness group, which had a supportive group of lawyers who were feeling the same way as her. This made her feel even better that she wasn't alone, and that it's normal to feel that way. For X, mindfulness taught her to be more aware of what she was doing in that moment, to be present. Through mindfulness, a mental body scan allows us to focus our attention on what our body is currently doing (unlike taking a dancing class where you tend to be preoccupied with learning the dance at the expense that you may be tightening up your shoulders, back, etc.). Mindfulness for X allows us to become more aware (or pay attention) to our own thought process and intentions before we act. This can be helpful when working with the adversary because it teaches us to think before we act ("wedge of awareness") because sometimes in the heat of the moment we tend to make rash decisions, which isn't helpful to our client.

Along a similar line with taking care of yourself, X's presentation centered on mindfulness and taking care of yourself as the best way to be

an ethical lawyer. Her focus on oneself was revealing, especially because I think it is a more common perception to think that worrying about clients and their problems might be the best way to behave ethically and professionally. However, her presentation really revealed the impact that mindfulness can have in terms of relating to clients and helping them address their problems. By putting yourself first in the overall context of your life (i.e., taking care of yourself, practicing mindfulness as a way to combat the overwhelming effects of stress), you are better able to put the client and their needs first and to relate to clients in a way that is most beneficial to them. A client's needs, or even their feelings, shouldn't be overlooked by a lawyer who is too focused on what is going on in their own life (e.g., the twenty other things that they have to get done after meeting with that client), and mindfulness helps combat this problem. The very short breathing exercise we did in class had a noticeable impact of clearing your head of that to-do list for a couple minutes in order to focus on what is in front of you. This can be especially useful for building relationships with clients in order to be your best professional self.

Here is a third student answer to question two:

Insight #3. Set my ego aside and take a few minutes each day to think positive thoughts about others.

X's talk about mindfulness and Love and Kindness Practice . . . was also really impactful for me. She also talked about Love and Kindness practice – taking a moment to think about someone you love, and contemplate the qualities you love about them, then focus energy on wishing them good fortune, safety, happiness, etc. By focusing your energy on love and kindness, you eliminate some of the negative energy surrounding us in the world, and reduce the limbic reactions you might otherwise have when you encounter this person. Finally, X talked about ego, and how this can be one of the most dangerous obstacles not only to happiness, but also to career success. Being driven by ego may not only hurt you, but could also hurt your coworkers, your clients, and your practice. If I'm having an issue with another person, I try meditating about that person, and conjure up as many nice things to think about that person as I can - this has made a huge difference in my relationships!

Here is another student answer to question two:

X: Mindfulness. X's point about the dangers of multi-tasking is something that has stuck with me and I have tried to take to heart. Possibly as a result of the era I have grown up in or possibly just a result of the restless nature of my brain, I am constantly trying to extend my time over multiple activities at once. In part, this is a survival technique to avoid boredom but I see now that it is also a nervous habit that prevents me from being mindful in many situations. From X, I learned that small

changes in behavior can add significantly to my ability to be mindful in any given situation, and in turn act more professionally.

Here is a final student answer to question two:

Finally, X, a criminal defense lawyer, spoke about mindfulness and why it is important for lawyers and law students to practice mindfulness. Mindfulness can help make a person less stressed and therefore be able to concentrate better and become a better advocate for a client. Ms. X explained that a happy lawyer is a good lawyer and vice versa. She provided four different ways to practice mindfulness, which include meta, RAIN, gratitude practice, and switching bodies with someone when imaging a difficult situation. Meta is a loving-kindness practice in which the person thinks about someone they love, someone they do not love as much, and someone they do not know, and send love, happy thoughts and peace to those people. RAIN is recognize, allow/accept, investigate, and non-identify. Gratitude practice is keeping a gratitude journal or waking up every morning and thinking about what a person is grateful for. Finally, she suggested when a difficult situation arises, imagine someone who has all the qualities the person wants to live up to, switch bodies with that person, and sit back to see how he or she handles the situation. All of these practices allow focus and resilience to a lawyer or law student in order to be the most effective and ethical counsel.

III. PROVIDE AND REFLECT UPON YOUR OWN EXAMPLE (NOT DISCUSSED IN CLASS) OF HOW YOU CAN APPLY A CONCEPT THAT YOU LEARNED FROM OUR CLASSES OR READINGS THAT WILL IMPROVE YOUR LEGAL ETHICS AND/OR PROFESSIONALISM DECISION-MAKING.

Here is a student answer to question three:

I plan to continue practicing mindfulness, and employ what I've learned about positive psychology and EI (Emotional Intelligence) to better help me relate to my clients and future co-workers. By focusing on myself and being a more mindful person, I can use what I've learned to help create a positive law firm, and greater legal community in Colorado.

Here is a second student answer to question three:

One of the central themes from class was mindfulness. In class and with various guest speakers we focused mostly on the benefits of mindfulness from two main perspectives: 1) Individual mental health, self-awareness, and emotional intelligence and 2) From a client-service perspective. Being mindful means paying attention deliberately, moment to moment, and without attachment to whatever passes through five senses of your mind. This is critical for both recognizing when your mental health is deteriorating and seeking out the necessary professional support

to get healthy. And being mindful is critical for understanding and assessing your client's needs to best formulate a strategy to serve them.

I want to focus on another benefit of mindfulness and that is effective professional communication. Too often, we are consumed by a barrage of over-information. In a given day, a lawyer or law student will receive hundreds of emails, multiple phone calls, countless in-person conversations, and hundreds or thousands of text and various other messaging platform communications. This has created an unprofessional candor when attempting to process and respond to this information overload. Many law students now struggle with simple email correspondence, as X mentioned in her talk. This is because our brain moves so quickly that we jump from task to task without fully concentrating on a single task. By being more mindful and attentive to detail it is easier to slow down and have more effective communication. Everyone knows of the email horrors of "reply all" that has taken many summer associates victims at big law firms; this comes from a lack of mindfulness that is reinforced by social trends among millennials in the age of texting. Being more mindful when sending an email will lead to much more effective professional communication. Communicating your decision effectively is almost as important as the decision itself that you make.

Another way that mindfulness will improve professional communications is through the use of "active listening." Active listening is key for processing information and correctly storing it. Actively listening is when an individual actively participates in the conversation, by asking questions to show the speaker that they are following along. Too often, today, in conversations one person is speaking while the other person in the conversation is multi-tasking, usually texting on their phone or using another application. This can be frustrating for the speaker who doesn't feel that they are having a high-quality interaction and it may also lead to informational losses because the listener is not retaining the information.

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Lastly, as a professional, active listening can have a positive impact on a law student or young attorney's ability to network. Decision-making is based around aggregating and processing all of the available information, to the best of your ability, at the time that the decision needs to be made and making the best possible decision on the available facts. In the legal field, there is a sense that attorneys are often pessimistic and abrasive. There is a consensus of rudeness, threats, sarcasm, embarrassment and condescension among professionals that mar many relationships. This toxicity diminishes productivity by decreasing the amount of high-quality connections a professional can make in a single

day. However, by being mindful of this perception and using active listening to hear another's thoughts and feelings and engage effectively it will create a stronger relationship. The stronger the relationship and the more information a lawyer has the more effective their decision-making process can be.

Here is a third student answer to question three:

I think this is easy for me—mindfulness. Being in the moment has already helped me. You see, I don't believe everyone is ethical or unethical, largely because that definition changes as society changes, but I do believe we are defined by our reactions. Poor reactions occur when you begin to fall behind at work, or in your personal life. Poor reactions happen when you feel underappreciated and overworked. Poor reactions occur when you make mistakes. Ethics are not the problem, rather they are the symptoms of a greater issue, they are our reactions to what really is the problem. Mindfulness gives you the tools to work on these reactions and manage the real problems that may be causing the poor reactions.

Here is another student answer to question three:

Goal #3: Check in regularly.

Finally, if I find myself not happy, overly stressed, uncivil, or otherwise unpleasant, I intend to take a step back and revisit some of the materials, notes, and lessons presented during this class. The *Happy Lawyer* is one of the most insightful, well-written books in the self-help category that I've read, and I'm making a goal to revisit it within a year or so of starting at the firm. In the second to last class, a guest speaker asked us to write a note to ourselves to be opened within a year. I enjoyed the three questions that she had us answer, but it oversimplified things. We've learned so much in this class that it seemed shortsighted to only include the teachings of one class period on that note. With that said, I've opened up my envelope and added in a three-page letter that encapsulates much of what I'm writing in this exam. If after year one I open the letter and say "I've given this an honest effort and am still unhappy here," then I will seek another job. If I say "oh, I forgot to do X, Y, and Z," I will focus on those things and see if that changes anything. One thing I've learned is that we have to know our strengths and weaknesses so that we can help put ourselves in positions where we are most likely to succeed and be fulfilled. I know that BigLaw is not the place where I am most likely to do good work and be fulfilled, but by being mindful, purposeful, and attentive to my own needs, I hope to tilt the scales a bit. And if not, may I be granted the power to make the necessary changes.

Here is a final student answer to question three:

Mindfulness was a large topic of our class and discussed in many contexts. However, the most important takeaway from this theory, in conjunction with other topics of the class, was its application on my

personal life. While the question prompts for how this theory will improve your legal ethics and/or professional decision-making, it is my belief that everything we do professionally, and for lawyers in making legal ethics decisions, is derived out of our personal lives. As was previously discussed, happiness leads to ethical behavior. Without happiness, we cannot make ethical decisions or accurate JDM (Judgment and Decision-Making) in our professional lives. Happiness can never be achieved in our professional lives without first having happiness in our personal lives and happiness in ourselves. Therefore, in order to improve our legal ethics and professional decision-making, we must first improve ourselves and our personal lives. For me, mindfulness is the key lesson to take away from this course in order to improve myself and my personal life.

In our lives, we are always presented with situations, feelings and decisions. All of them affect our current mindset, mind frame, and attitude. None, however, more so than the ones that we face in our personal lives and ultimately those interactions with family, friends and partners. Every time we are presented with a situation or decision with one of these people in our personal lives, the effect of our interactions has a profound impact on our emotions. Those emotions further impact later situations, decisions and interactions. This can have a spiral effect. If the interactions are good, then we are happy and likely the next interaction will be good, and we will retain or increase our happiness. However, if the interaction is negative, the next will likely be negative, and we will continue down the spiral. Mindfulness can help to alleviate these decisional effects. By paying attention to and understanding the present moment, we can make decisions or react to what is going on in front of us or the thing that we are doing at that moment. This practice of awareness and mindfulness in the moment can help to separate ourselves from the situation and get us out of a negative hole that we have dug or keep us on the highs that we have built.

Additionally, we make several decisions in our personal lives like buying a house, attending graduate school, having children or changing jobs. Each of these decisions will have a lasting impact on our lives and ultimately our emotions and feelings. By applying the theory of mindfulness, we can make well thought-out deliberate decisions that are choices rather than reactions to external effects. This will provide us with choices and decisions that were ultimately the correct ones and not hastily made. This leads to overall happiness in the decision and the later results. This further evolves the use of mindfulness in our lives because there is little reason to look back on our decisions questioning them and being less present.

This class has taught me that I must ensure that I am happy and content in my personal life in order to be happy and fulfilled in my professional life. No matter what I do professionally or how much money I make, or how successful I become, without happiness and fulfillment in my personal life it will never be enough. I believe that this starts with practicing mindfulness in all of my life, but especially in my personal life.

In conclusion, the above excerpts of law students' answers to final examination questions in a section of a required legal ethics and professionalism course illustrate some law students' reflections about mindfulness. As these students' own voices and words vividly demonstrate, the benefits of mindfulness can be dramatic, far-reaching, individual, memorable, personal, powerful, professional, social, systemic, and transformative.