

MINDFUL ETHICS AND THE CULTIVATION OF CONCENTRATION

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INTRODUCTION

At the same time that the legal profession is experiencing great upheaval, mindfulness is being embraced as an important vehicle for assisting both the individual and the larger collective in responding to the many challenges posed by a rapidly changing world. A secular practice with roots reaching back thousands of years,¹ mindfulness is commonly regarded as a tool for reducing stress, achieving greater focus and concentration, and working with anxiety, depression, substance abuse, pain, and a host of other physical and emotional challenges.² Whereas five years ago there was little mention of mindfulness in the law, today it is a widely recognized term. Furthermore, a growing number of law schools are offering mindfulness programs, legal conferences are organizing mindfulness presentations and workshops, and legal organizations are introducing mindfulness to their members.³

“Mindful Ethics,” an approach that we developed for integrating mindfulness and professional responsibility,⁴ is among the various methods through

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¹ Buddhist teachings and psychology are frequently identified as the source of many of the mindfulness exercises discussed and practiced today. Notably, these teachings, insights, and practices share much in common with a great many contemplative traditions. *See generally* DANIEL GOLEMAN, *THE MEDITATIVE MIND: THE VARIETIES OF MEDITATIVE EXPERIENCE* (1988).

² *See, e.g.*, SHARON SALZBERG, *REAL HAPPINESS* 27 (2011). *See generally* SHAUNA L. SHAPIRO & LINDA E. CARLSON, *THE ART AND SCIENCE OF MINDFULNESS: INTEGRATING MINDFULNESS INTO PSYCHOLOGY AND THE HELPING PROFESSIONS* (2009).

³ *See generally* Scott L. Rogers, *Mindfulness in Law*, in *THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS* (Amanda Le et al. eds., 2014) [hereinafter Rogers, *Mindfulness in Law*].

⁴ SCOTT L. ROGERS & JAN L. JACOBOWITZ, *MINDFULNESS & PROFESSIONAL RESPONSIBILITY: A GUIDE BOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM* (2012) [hereinafter ROGERS & JACOBOWITZ, *MINDFULNESS & PROFESSIONAL RESPONSIBILITY*]; Jan L. Jacobowitz & Scott Rogers, *Mindful Ethics—A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing Professional Identity, and Encouraging Civility*, 4 ST. MARY’S J. ON LEGAL MALPRACTICE & ETHICS 198 (2014) [hereinafter Jacobowitz & Rogers, *Mindful Ethics*].

which mindfulness is being introduced into law practice and legal education.⁵ We have previously written on the role of mindfulness practice in helping lawyers cultivate a more deeply rooted connection to the rules of professional responsibility and respond more effectively in the midst of ethically challenging situations.⁶ In this paper, we further develop the thesis that mindfulness and ethics enjoy a symbiotic connection, such that an attorney's deliberate attentiveness to the rules of professional conduct as a personal ethic can help cultivate a mindfulness practice.⁷ Understanding why this is so calls for a deeper examination of this profoundly rich wisdom tradition.

So as to provide the necessary backdrop to this exploration, we offer a brief overview of mindfulness and two forms of this contemplative practice. We then broaden this discussion by connecting these practices to a tenet of Buddhist psychology that recognizes the fundamental role of ethical contemplation and conduct in the development of mindfulness. Next, we identify the legal profession's rules of professional conduct as an ideal, secular means of establishing salient ethical attitudes and values. This serves not only to teach professional responsibility and develop professional identity,⁸ but also to support the development of a sustainable mindfulness practice. We conclude by providing practical examples of the implementation of Mindful Ethics in the context of legal education and the practice of the law.

I. MINDFULNESS

Mindfulness is a practice of paying attention to present-moment experience in a manner that is engaged and unassuming.⁹ "Engaged" means attentive, interested, and observant, and "unassuming" means being without judgment—open and receptive to what arises in the field of awareness.¹⁰ By intentionally paying attention, moment by moment, we cultivate a more direct relationship to what is arising, seeing more clearly what is at play. To the extent we are able to remain connected to this experience, we are more responsive to what a given

⁵ See generally Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. REV. 535 (2011); Rogers, *Mindfulness in Law*, *supra* note 3.

⁶ See generally ROGERS & JACOBOWITZ, MINDFULNESS & PROFESSIONAL RESPONSIBILITY, *supra* note 4, at 29–44.

⁷ Importantly, the connection we are making between the rules and a mindfulness practice is primarily directed to attorneys interested in practicing mindfulness.

⁸ See generally Angela P. Harris, *Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, and Professional Identity*, 61 J. LEGAL EDUC. 647 (2011); Jan L. Jacobowitz, *Cultivating Professional Identity & Creating Community: A Tale of Two Innovations*, 36 U. ARK. LITTLE ROCK L. REV. 319 (2014).

⁹ Scott L. Rogers, *The Role of Mindfulness in the Ongoing Evolution of Legal Education*, 36 U. ARK. LITTLE ROCK L. REV. 387, 389 (2014) [hereinafter Rogers, *The Role of Mindfulness*].

¹⁰ *Id.*

situation requires.¹¹ Otherwise, when situations fail to meet our expectations, when the pressure mounts and the unpleasant and unexpected arise, we risk falling into a more reactive, defensive, and fearful relationship to what is taking place. Our words and deeds shift out of alignment with what is at stake and our decision making suffers, not to mention our wellbeing.¹²

In the context of professional responsibility, the adversarial, intimidating, and high stakes realm of law practice (and law study, for that matter) can set in motion scenarios that lead to perceptions of threat, urgency, and consequence that provoke unhelpful, counterproductive, and reactive words and deeds, which in turn countenance more of the same.¹³ While emotional reactivity does not necessarily lead to unethical conduct, it often results in the incivility and lack of professionalism that fuels the growing sentiment among legal professionals about the inhospitable environment in which they work and elevates the risk for ethical lapses. Mindfully attending to people and situations in a manner that is engaged and unassuming allows one to identify with greater acuity what is actually at play, and engenders a “lean in” attitude to more effectively manage these situations in a way that is productive and affirming.¹⁴

A. *Focused Attention and Open Monitoring*

One of the most popular mindfulness practices involves placing attention on an object (often the breath) and, when the mind (i.e., one’s attention) wanders, returning attention to the object.¹⁵ This *concentration* practice, not surprisingly, helps to refine one’s capacity to focus and maintain attention on an object, and the brain science examining this practice reports corresponding changes to brain regions associated with attention.¹⁶ Often likened to working

¹¹ See, e.g., JON KABAT-ZINN, *MINDFULNESS FOR BEGINNERS* 1 (2012); see also MARK WILLIAMS & DANNY PENMAN, *MINDFULNESS: AN EIGHT-WEEK PLAN FOR FINDING PEACE IN A FRANTIC WORLD* 35 (2011).

¹² See Amishi P. Jha, Scott L. Rogers & Alexandra B. Morrison, *Mindfulness Training in High Stress Professions: Strengthening Attention and Resilience*, in *MINDFULNESS-BASED TREATMENT APPROACHES: CLINICIAN’S GUIDE TO EVIDENCE BASE AND APPLICATIONS* 347, 351 (Ruth A. Baer ed., 2d ed. 2014); PHILLIP MOFFITT, *EMOTIONAL CHAOS TO CLARITY: MOVE FROM THE CHAOS OF THE REACTIVE MIND TO THE CLARITY OF THE RESPONSIVE MIND* 60 (2012).

¹³ See ROGERS & JACOBOWITZ, *MINDFULNESS & PROFESSIONAL RESPONSIBILITY*, *supra* note 4, at 52–54; SCOTT L. ROGERS, *MINDFULNESS FOR LAW STUDENTS* 72–74 (2009); Jan L. Jacobowitz, *The Benefits of Mindfulness for Litigators*, 39 *LITIG.* 27, 28 (2013).

¹⁴ Don Ellinghausen, *Venting of Vipassana? Mindfulness Meditation’s Potential for Reducing Anger’s Role in Mediation*, 8 *CARDOZO J. CONFLICT RESOL.* 63, 70–72 (2006) (exploring the role of mindfulness in toning down agitated emotional states).

¹⁵ See, e.g., KABAT-ZINN, *supra* note 11, at 84; SCOTT L. ROGERS, *THE SIX-MINUTE SOLUTION: A MINDFULNESS PRIMER FOR LAWYERS* 11 (2009); SALZBERG, *supra* note 2, at 11; Leonard L. Riskin, *The Place of Mindfulness in Healing and the Law*, in *SHIFTING THE FIELD OF LAW AND JUSTICE* 99, 100 (Linda Hager et al. eds., 2007).

¹⁶ SUSAN L. SMALLEY & DIANA WINSTON, *FULLY PRESENT: THE SCIENCE, ART, AND PRACTICE OF MINDFULNESS* 6 (2010); Amishi P. Jha, *Now Being in the Now*, 24 *SCI. AM. MIND* 26, 26, 31–33 (2014).

out at a gym, the practice is said to exercise the muscle of attention.¹⁷ With practice, not only does one's ability to pay attention improve, but so do states of mind and body likely mediated by attention, such as emotional regulation and working memory.

William James recognized the value of this practice when he wrote, "[T]he faculty of voluntarily bringing back a wandering attention over and over again is the very root of judgment, character, and will."¹⁸ James strongly advocated teaching students this exercise as an integral part of their education.¹⁹ Richard Davidson, one of the world's most respected neuroscientists studying the effects of mindfulness practice on the brain, refers to this practice as "Focused Attention," noting that it "entails voluntarily focusing attention on a chosen object in a sustained fashion."²⁰

But the mindfulness practice of concentrating attention around an object and returning attention to that object when the mind wanders is not an easy one. The experience of many is that, notwithstanding a desire to do so, sitting and concentrating attention around the breath for more than a few minutes proves too difficult to work into a busy day. And so a practice that holds the prospect for so much that is beneficial—personally and professionally—is frequently neglected. However, it may well be the case that a packed calendar is not the primary hurdle to establishing a mindfulness practice. Indeed, a primary obstacle to toning down a distracted mind is, well, the distracted mind. For while a requisite degree of focused attention is needed to realize that the mind has wandered from the chosen object, the more disruptive or agitating the distraction, the more challenging it can be to maintain focused attention in the first instance.

A second practice, generally predicated on first having developed one's concentration practice and skills, involves expanding the field of awareness to attend to the ongoing flow of experience (e.g., sights, sounds, physical sensations, thoughts) as an observer—noticing, but not becoming caught in the experience, be it pleasant or unpleasant. This practice is commonly referred to as "bare attention" or "choiceless awareness" and, in the scientific literature, has been termed "Open Monitoring."²¹

¹⁷ See John Ericson, *Brain Gym Promotes Mental Agility, Combats Cognitive Decline: 'Brain Fit Club' Uses the Science of Neuroplasticity to Help Concussion, Dementia Victims*, MED. DAILY (Sept. 23, 2013, 6:50 PM), <http://www.medicaldaily.com/brain-gym-promotes-mental-agility-combats-cognitive-decline-brain-fit-club-uses-science-257712>; Daniel Goleman, *Meditation: A Practical Way to Retrain Attention*, MINDFUL (NOV. 20, 2013), <http://www.mindful.org/the-science/meditation-a-practical-way-to-retrain-attention>.

¹⁸ WILLIAM JAMES, *THE PRINCIPLES OF PSYCHOLOGY* 424 (1890).

¹⁹ *Id.*

²⁰ Richard J. Davidson & Antoine Lutz, *Buddha's Brain: Neuroplasticity and Meditation*, IEEE SIGNAL PROCESSING, Jan. 2008, at 176, 173 (reporting that less effort is needed to sustain attentional focus following extensive Focused Attention training); see also Antoine Lutz et al., *Attention Regulation and Monitoring in Meditation*, 12 TRENDS COGNITIVE SCI. 163, 163 (2008).

²¹ Lutz et al., *supra* note 20.

The concentration practice “anchors” one’s attention to an object so that when the mind wanders the practitioner may readily apprehend that the mind is “off course.” By contrast, the more expansive practice leaves one more susceptible to creating and getting lost in a “story” triggered by the arising of some momentary phenomenon. Hence, there tends to be a natural progression from the concentration practice to the bare attention practice after a greater stability of mind is achieved. The differences between these two forms of practice, especially as one first learns them, may be subtle, both conceptually and experientially.²²

Traditional mindfulness practice is embedded in a framework that is designed to help steady the mind as one undertakes the challenges inherent in developing one’s concentration.²³ The prescribed method for doing so involves intentional and regular engagement in ethical contemplation and conduct. As is discussed more fully in Part III below, this ethical piece serves *inter alia* to create a more stable internal environment for a concentration practice to flourish which, in turn, prepares one more completely to remain open and attentive, moment by moment, to whatever is predominant in one’s experience.

II. MINDFULNESS AND ETHICAL DECISION-MAKING

Although the ancient mindfulness prescription for ethical contemplation has not yet been fully integrated into the modern discourse on mindfulness in the legal context, it is a small step to appreciate how the capacity to notice more and react less impulsively serves an attorney well.²⁴ Mindfulness is a practice of developing greater awareness of our interpersonal interactions and of the events taking place in our lives, along with our reactions to those events. This practice lends itself to a conversation on ethical and professional conduct. For indeed, it is the orbit of the actions and expectations of opposing counsel, our clients, colleagues, and family, that propels the challenging professional and personal situations and the emotional reactivity that leads to ethical missteps.

We are continually making decisions, though we may not always realize the depth of this truism. Whether scratching an itch, driving a car, or responding to an opposing counsel’s remark, decisions are being made as evidenced by action or inaction. While these decisions may be made without much conscious

²² Appreciating the difference can be important to one interested in a deeper connection with the fruits of the contemplative practice, as the concentration practice is oriented around steadying the mind while the bare attention practice moves more into the realm of insight and the cultivation of wisdom. See JOSEPH GOLDSTEIN, *MINDFULNESS: A PRACTICAL GUIDE TO AWAKENING* 13–27 (2013). It is perhaps for this reason that much modern day discussion tends toward the more pragmatic and less “mystical” concentration practice. In fact, the deeper insights that everything changes, that we can become too self-absorbed, and that we are not the only one who suffers, can all prove immensely helpful, as a practical matter, in practicing law.

²³ *Id.* at 22; THICH NHAT HANH, *THE HEART OF THE BUDDHA’S TEACHING: TRANSFORMING SUFFERING INTO PEACE, JOY, AND LIBERATION* 64–83 (1998).

²⁴ Rogers, *The Role of Mindfulness*, *supra* note 9, at 407–09.

awareness (e.g., scratching the itch), amid a state of ongoing deliberation (e.g., maneuvering the vehicle in a neighborhood), or as a form of reciprocal engagement (e.g., responding to opposing counsel's action), these decisions are all sparked by an event that compels us to do something. What tends to obscure our realization that we are making decisions is that the decisions happen so frequently, are often habitual, and more often than not are of little consequence.

Mindfulness practice invites us to shine a spotlight of awareness on the ways we respond to events taking place in our life, moment by moment. Doing so, we gain insight over both the effect of these events on us and the ways they compel us to take action (or refrain from doing so). As a result, we develop greater mastery over our decision making. Importantly, we see more clearly into the proximate causation underlying our actions. This can be especially important when we find ourselves in challenging situations. Ethical dilemmas pose some of the more interesting and consequential of these challenging scenarios.

We have previously written on how mindfulness practice can help facilitate more reflective and wiser decision making, thereby fostering greater ethical conduct, and we have elaborated on mindfulness exercises developed specifically for this purpose.²⁵ Moreover, research has found that mindfulness training can lead to improvements in moral reasoning and decision making,²⁶ as well as moral action.²⁷ Further, persons scoring high in mindfulness place more importance on upholding a high moral standard.²⁸ And because mindfulness practice is associated with a greater capacity to regulate emotions,²⁹ practicing mindfulness can foster a more stable interior environment from which to make better decisions amid heated contests.

This brings us back to our discussion on the role a concentration practice plays in developing these skills and of the challenges of practicing. In our work with lawyers and law students, we teach a variety of concentration practices. Whereas traditional mindfulness trainings tend to call for between twenty and sixty minutes of daily practice, we find that the legal context, owing largely to pragmatic considerations, looks to more conservative time periods, ranging from the momentary pause associated with "taking a few conscious breaths" to

²⁵ See ROGERS & JACOBOWITZ, *MINDFULNESS & PROFESSIONAL RESPONSIBILITY*, *supra* note 4; Jacobowitz & Rogers, *Mindful Ethics*, *supra* note 4, at 233–34.

²⁶ Pamela Casey et al., *Minding the Court: Enhancing the Decision-Making Process*, 5 INT'L J. CT. ADMIN. 45, 50–51 (Feb. 2013).

²⁷ David DeSteno, *The Morality of Meditation*, Op-Ed., N.Y. TIMES, July 7, 2013, at SR12, available at <http://www.nytimes.com/2013/07/07/opinion/sunday/the-morality-of-meditation.html>.

²⁸ Nicole E. Ruedy & Maurice E. Schweitzer, *In the Moment: The Effect of Mindfulness on Ethical Decision Making*, 95 J. BUS. ETHICS 73, 78 (2010).

²⁹ Rimma Teper et al., *Inside the Mindful Mind: How Mindfulness Enhances Emotion Regulation Through Improvements in Executive Control*, 22 CURRENT DIRECTIONS PSYCHOL. SCI. 449, 451 (2013).

fifteen minutes.³⁰ This modern trend has the benefit of “sounding” more reasonable and doable, but there is much to be said for what is gained through a longer practice period.

III. ETHICS AND STEADYING THE MIND

In setting forth the Noble Eightfold Path³¹ as a means to find relief from the suffering endemic in human existence, Buddhist psychology identifies eight factors, structured within three overarching categories—ethics, mental discipline, and insight.³² Viewed as a linear progression,³³ ethics can be seen as the foundation for a concentration practice (think “focused attention”), which then establishes a quality of mindful engagement that is stable and receptive to the profound insights to be drawn from everyday experience (think “open monitoring”)—thereby allowing one to be more at ease in life, notwithstanding that it remains unpredictable, unstable, and, at times, unpleasant.

It may come as no surprise that outside of the historical context from which a concentration practice emerged, attentiveness to ethics may be regarded as misplaced. After all, Western culture has developed its own set of moral and ethical precepts, which, not surprisingly, dovetail with those originating within the Buddhist context.³⁴ Hence, making explicit the Buddhist prescriptions for living an ethical life may be regarded as redundant or may evoke a religious quality that is treated as suspect or inappropriate when offered in a secular context.³⁵ However, the fact that ethical contemplation is inherent in Buddhist psychology lends credence to the relevance and value of incorporating legal ethics into a contemplative practice. We are not contending that mindfulness trainings need to include an overt ethical dimension, or for that matter that the develop-

³⁰ Based on informal survey of colleagues. Shorter periods are also becoming the standard in contemporary trainings.

³¹ See GOLDSTEIN, *supra* note 22, at 319–20.

³² These eight factors include Right Speech, Right Action, Right Livelihood (ethics); Right Effort, Right Mindfulness, Right Concentration (mental discipline); Right Understanding and Right Thought (insight). Walpola Rahula, *The Eightfold Path*, TRICYCLE MAG., <http://www.tricycle.com/new-buddhism/-noble-eightfold-path/eightfold-path>. The adjective “Right” refers to an attitude and conduct aimed at reducing suffering. Various legal commentators have explored the relevance of the Noble Eightfold Path to legal professionals. See, e.g., Deborah J. Cantrell, *Can Compassionate Practice Also Be Good Legal Practice?: Answers From the Lives of Buddhist Lawyers*, 12 RUTGERS J. L. & RELIGION 1, 56 (2010) (discussing the seeming tension between Buddhist practices and the Rules of Professional Conduct).

³³ While a linear approach is helpful for seeing the role of ethics (“sila”) in facilitating a concentration practice, most agree that the three categories interrelate and support each other. For example, concentration enables one to behave more ethically and insight inspires a concentrative attentiveness to moment-to-moment experience. See GOLDSTEIN, *supra* note 22, at 320; Rahula, *supra* note 32.

³⁴ See Leonard L. Riskin, *Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior*, 50 S. TEX. L. REV. 493, 496–98 (2009); Rogers, *The Role of Mindfulness*, *supra* note 9, at 406.

³⁵ But see SALZBERG, *supra* note 2, at 14.

ment and refinement of one's personal ethic cannot be fostered through concentration and insight practice.³⁶ However, we are suggesting that it is worth considering how the challenge of mindfulness practice might be supported by an explicit attentiveness to ethics and how this might be accomplished by drawing upon the Model Rules of Professional Conduct.³⁷

As a general matter, rules of conduct serve the larger interest of establishing a stable environment for a broad range of human interaction. In this regard, the rules of professional conduct facilitate an organized system for governing the conduct of lawyers.³⁸ The rules reflect core values of the profession such as honesty, trust, and loyalty; provide guidelines that address the appropriate relationships among lawyers, clients and the judiciary; and support the fair administration of justice and the rule of law.³⁹ The rules also recognize that lawyers may fall prey to temptations, such as gossip and greed, and establish a disciplinary system to address transgressions. The rules establish the permissible parameters for appropriate conduct and thereby facilitate a more stable *external* environment in which to operate. So too, rules for conduct may establish a stable *internal* environment to support both the practice of mindfulness and ethical decision making.⁴⁰

IV. MINDFUL ETHICS

Mindful Ethics represents the coming together of mindfulness practice and professional responsibility. It assumes a form that blends the two together in a manner that allows for greater awareness in the midst of ethical challenges and draws upon the ethics rules to support mindfulness practice.

A growing number of law schools are introducing students to mindfulness, either as a stand-alone practice⁴¹ or as an integrated part of the law school curriculum.⁴² And for each instance of mindfulness making its way into the curric-

³⁶ See generally Riskin, *supra* note 34 (arguing that insight practice can in fact develop ethical behavior).

³⁷ See Cantrell, *supra* note 32.

³⁸ See generally MODEL RULES OF PROF'L CONDUCT (2002).

³⁹ See generally *id.*

⁴⁰ See Lawrence Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 425–26 (2005); Rogers, *The Role of Mindfulness*, *supra* note 9, at 406.

⁴¹ Magee, *supra* note 5, at 537; 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, 3 (2002). See generally Scott L. Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 TOURO L. REV. 1189 (2012) (describing one such program in depth).

⁴² For example, at the University of Miami School of Law, in addition to "Mindful Ethics" being offered as a part of the required Professional Responsibility curriculum, Scott Rogers teaches the seminar "Mindfulness in Law" to upper level students, and, together with Raquel Matas, teaches "Mindfulness and Leadership." Scott also teaches mindfulness to 1L students as part of a voluntary six-week course called "Jurisight." Also at Miami Law, William Blatt teaches a course in Emotional Intelligence, and Rebecca Sharpless and Bernie Perlmutter are

ulum there are many situations in which short mindfulness practices are infused into the classroom experience so as to create a moment for reflection or for a calming of the mind.⁴³

While students benefit from mindfulness practice as an explicit part of the classroom experience, for many students the opportunity to practice mindfulness proves to be extremely challenging—both in and out of class.⁴⁴ Our Mindful Ethics course responds to this challenge by offering students a series of class demonstrations and take-home exercises designed to impart mindfulness insights and inspire experiential practice. Moreover, as will be explored more fully in the next section, students connect with the rules of professional conduct in such a way that it helps create an ethical foundation to support a mindfulness practice.

Throughout the course of the semester, students read a series of vignettes following the lives of two fictional characters, Pedro Respono and Mindy Fuller, who travel through their legal careers confronting a variety of ethical challenges.⁴⁵ While Pedro and Mindy do not always demonstrate sound ethical judgment or engage in mindfulness practices, their actions offer students the opportunity to do so. The students are provided with assignments and exercises specifically tailored not only to consider and analyze the legal ethics rules and challenges confronting Pedro and Mindy, but also to use such ethical contemplation to support themselves as they set about developing a mindfulness practice.⁴⁶ A demonstration that helps students better understand the purpose and benefits of mindfulness practice is called “The Spiral.” The Spiral demonstrates how an event can set in motion a series of agitated and reactive thoughts, emotions, and bodily sensations. These thoughts, emotions, and bodily sensations begin to “burn” around a spiral that ignites emotional reactivity and may result in an unproductive response that sometimes propels one across an unprofessional or unethical line.⁴⁷ Students learn to apply the Spiral to their own experience, initially based upon the travails of Pedro and Mindy, and eventually based upon their own life events. Insight into the nature of the mind can prove to be a powerful tool for seeing more clearly the ways we are drawn into chal-

infusing mindfulness into the clinical curriculum. Examples of mindfulness being integrated into the curriculum can also be found at Berkeley Law, where Charlie Halpern and Dan Carlin teach “Effective and Sustainable Law Practice: The Meditative Perspective,” at University of San Francisco Law where Rhonda Magee teaches “Contemplative Lawyering,” and at Northwestern and University of Florida, where Leonard Riskin teaches the seminar “Tools of Awareness for Lawyers.”

⁴³ ROGERS & JACOBOWITZ, *MINDFULNESS & PROFESSIONAL RESPONSIBILITY*, *supra* note 4, at 6.

⁴⁴ And while mindfulness practice is not for everyone, those who persist amid the challenges that arise are often gratified that they did. *See generally id.* (providing throughout student comments on their experience integrating mindfulness into the class).

⁴⁵ *See, e.g., id.* at 31.

⁴⁶ *Id.*

⁴⁷ *See* Jan L. Jacobowitz, *Mindfulness and Professionalism*, in *ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER* 229, 232–33 (2013); Jacobowitz, *supra* note 13, at 29.

lenging situations and difficult interpersonal interactions. Accordingly, mindfulness practices allow these insights to be absorbed more deeply, thereby promoting a more natural and spontaneous shift away from the reactivity swirling in the midst of a “spiral,” to a more contemplative, responsive manner of relating to unpleasant encounters and situations. The Spiral demonstration has been effective not only in conveying mindfulness insights but also in encouraging mindfulness practice. Still, the challenges of sustaining ongoing and regular practice persist and, inspired by Buddhist psychology’s emphasis on the value of ethical contemplation, we have developed a set of teaching materials that draw upon the legal ethics rules to help steady the mind to facilitate mindfulness practice.⁴⁸

When students are initially introduced to the Model Rules of Professional Conduct, they are invited to connect the rules that will govern their professional careers to their personal lives, thereby further supporting their training in mindfulness. We provide students with a form that asks them to reflect on the following:

What makes for a professional and ethical attorney . . . and give thought to . . . the aspirations you hold out for yourself as an attorney, recognizing that it is an exciting and stressful environment in which you’ll be interacting with colleagues, clients, adversaries, judges, and perhaps most importantly, yourself.⁴⁹

To assist them in identifying and aligning attributes that dovetail with both a professional and personal ethic, students are instructed to complete five open-ended sentences that ask them to identify an aspiration for conduct that relates to a fundamental aspect of the legal profession. Each sentence takes the form: “When interacting with [e.g., opposing counsel, my clients, the court, my colleagues], I aspire to be _____.”⁵⁰

Then, the exercise moves from the professional to the personal, asking students to translate each of their aspirations for law practice into a situation to which they can currently relate and apply to their lives as students.⁵¹

In responding to this assignment, one student in our Spring 2014 class translated the aspiration, “When interacting with opposing counsel, I aspire to be *respectful*,” to “[b]e respectful when interacting with my peers, even those who are disrespectful toward me.” This same student translated her aspiration to interact with the court with *integrity* to “have integrity when preparing for and taking examinations and projects.” Another student translated his aspiration to be *dependable* when interacting with clients to “[b]eing dependable when I commit to doing something.” And another student applied his aspiration to be

⁴⁸ See generally ROGERS & JACOBOWITZ, MINDFULNESS & PROFESSIONAL RESPONSIBILITY, *supra* note 4.

⁴⁹ Institute for Mindfulness Studies, *Mindful Ethics Application*, THE MINDFUL LAW STUDENT, http://themindfullawstudent.org/page33/ME_application.html (last visited Sept. 7, 2015).

⁵⁰ *Id.*

⁵¹ *Id.*

truthful when interacting with the public to “[b]eing truthful in informing others of my career goals.”

This exercise allows students to identify and attempt to align their personal ethics and professional aspirations at the same time they begin to learn the specific proscriptions and underlying values that govern the legal profession. Asking them to apply these forward-looking professional aspirations to their lives as law students breathes life into the values reflected in the legal ethics rules such as candor, respect, and integrity. It also offers students the opportunity to bring these underlying core values into awareness and apply them while they are learning and grappling with the legal ethics rules.

Thich Nhat Hanh, a Zen master and one of today’s most influential mindfulness teachers, has crafted a set of aspirations for daily living that integrate many of the ethical guidelines established in the Noble Eightfold Path. Nhat Hanh recommends that the aspirations, derived from the Five Mindfulness Trainings,⁵² be recited often so as to remain in awareness and help inspire thought and action.⁵³ These aspirations include speaking truthfully, listening deeply, working for the wellbeing of others, endeavoring to resolve conflicts, not abusing substances, and transforming fear, anger, and violence.⁵⁴ In a similar vein, we plan to encourage students to take the set of personal aspirations that they each generate based on the underlying values of the professional responsibility rules and reflect on their aspirations regularly throughout the semester.

As is discussed above, Buddhist psychology, out of which mindfulness practices flow, explicitly underlines an ongoing reflection about ethical rules of conduct in order to help support these practices.⁵⁵ Just as the rules of professional responsibility can play a meaningful dual role in the life of the law student, so too the application of Mindful Ethics can play a meaningful role in the life of the lawyer. Many lawyers are only exposed to the professional responsibility rules in law school for the purpose of passing the MPRE exam, and then again as lawyers when seeking CLE credits. However, for an attorney interested in learning and practicing mindfulness, the explicit connection of ethics to mindfulness practice may inspire a meaningful engagement and reconnection with the rules of professional conduct and the underlying values of the legal profession. A compelling contemporary expression of the connection among a concentration practice, morality, and decision making is found in the words of Dan Carlin, a recent law school graduate and director of Berkeley’s Initiative for Mindfulness in Law. Carlin explains:

⁵² The Five Mindfulness Trainings are derived from “The Five Precepts,” a set of guidelines for living a joyful life. See HANH, *supra* note 23 at 84, 94–98.

⁵³ See THICH NHAT HANH, FOR A FUTURE TO BE POSSIBLE: COMMENTARIES ON THE FIVE WONDERFUL PRECEPTS 179 (1993).

⁵⁴ *Id.* at 3–5.

⁵⁵ See *supra* Part III.

One of the most helpful, and most surprising lessons I learned along the meditative path was that morality and concentration are deeply complementary practices. This was something of a revelation to me. I had unconsciously equated “morality” with only the most basic ethical strictures, like those identified in the Ten Commandments or the Five Precepts.⁵⁶ I came to appreciate from various readings that morality entailed cultivating kindness in everyday interactions such as in one’s internal monologue, in serving a meal, in writing an email.

Ultimately, I found that practicing morality in these seemingly banal forms led to greater concentration in two main ways. First, it turns out that moral conduct itself demands and develops serious concentration. Figuring out the moral thing to do or say in any moment entails being fully present, being mindful and focused with an attitude of kindness. And when I acted from that state, the rewards were immediate: a feeling of greater peace, clarity, and even joy. That was the second way that I found moral conduct enhanced concentration: by helping settle the mind and loosen the hold of negative emotions like jealousy, anger, and ill will which normally generate so much clutter and inner conflict.⁵⁷

The manner by which practicing attorneys might more intentionally integrate the rules of professional conduct into their day-to-day lives—thereby supporting their mindfulness practice⁵⁸—can take a variety of forms. For example, the Mindful Ethics exercises that we introduce to students can be shared with attorneys who may begin to connect the dots between the ethics rules governing their professional lives and articulations of those rules that translate into meaningful and practical reminders of the ways in which they aspire to conduct themselves, at work and at home.⁵⁹

Another example is use of the Five Mindfulness Trainings, or a variation of the Five Mindfulness Trainings that the attorney crafts for him or herself, or that a firm adapts and disseminates as part of the firm’s culture. These could be recited on a regular basis so as to instill a deeper sense of the rules and their application to daily practice and life.

Recitations already developed as part of the mindfulness in law movement may also be looked to for inspiration and as examples. These include the “Meditative Perspective,” developed by the Bay Area Working Group on Meditation and Law,⁶⁰ which identifies “wisdom and creativity,” “a sensitive and realistic

⁵⁶ The Five Mindfulness Trainings are a form of the “Five Precepts.” *See supra* note 52.

⁵⁷ E-mail from Dan Carlin, Dir., Berkeley Initiative for Mindfulness in Law, to author (Jun. 20, 2014) (on file with author).

⁵⁸ Of course, acting in greater alignment with one’s internal compass and deeply held beliefs is also associated with greater well-being. *See* Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 894 (2007).

⁵⁹ ROGERS & JACOBOWITZ, MINDFULNESS & PROFESSIONAL RESPONSIBILITY, *supra* note 4, at 45–97.

⁶⁰ This document evolved through the many years efforts of a group of practicing lawyers, judges, professors, and meditators. Working Group on Meditation and Law, *The Meditative Perspective* 2–3 (Apr. 2009) (working draft), available at http://www.contemplativemind.org/admin/wpcontent/uploads/2012/09/The_Meditative_Perspective-4_09.pdf.

set of ethics,” “focus and stability,” “patience and sustainability,” and “compassion and empathy” as some of the ways the meditative perspective can play a meaningful role in the lives of legal professionals, and the “Declaration of Purpose” of the Dade County Bar Association’s Mindfulness in Law Joint Task Force, which provides, in part:

We affirm that the manner by which we wish to study, practice, and interpret the law is one of collaboration, consensus, courage, creativity, compassion, and cooperation, for it is through these attitudes and actions that the adversarial and competitive nature of the legal system will thrive and evolve in a manner that is most meaningful and of greatest moment.⁶¹

An example of the ways that lawyers can develop creative means of bringing meaningful ethical aspirations into awareness is found in Professor Shari Motro’s suggestion that lawyers include language below the signature block of their e-mails that serve as reminders.⁶²

Finally, Mindful Ethics may be presented in a CLE or other law office training session using a customized legal ethics vignette, an exercise such as “The Spiral” and the contemplative practices that work well in our professional responsibility class. Often this type of training both supports lawyers who are attempting a mindfulness journey and sparks an interest in those who have not yet been exposed to the benefits that mindfulness can provide, not only for the individual lawyer but also for the legal community as a whole.

CONCLUSION

The infusion of mindfulness across the legal profession comes at a much-needed time both in terms of concerns over the health and wellbeing of law students and lawyers and in response to the call for greater civility and ethical decision making among members of the profession.⁶³ Much of the discussion around mindfulness and methods of integrating it into one’s life, both personally and professionally, looks to the concentration practice of focused attention. This practice, however, is a challenging one⁶⁴ and those interested in practicing mindfulness may ultimately be dissuaded or spend a great deal of time exploring ways to surmount the challenges to practice. Paradoxically, it is often the case that more time and effort is expended in the search for a more efficient way of practicing than is spent actually engaged in the practice itself.

⁶¹ *Declaration of Purpose*, MINDFULNESS IN LAW JOINT TASK FORCE, <http://mindfulnessinlawcommittee.com/home/declaration.html> (last visited Apr. 2, 2015).

⁶² E-mail from Shari Motro to author (Jun. 17, 2014) (on file with author).

⁶³ Magee, *supra* note 5, at 567–73 (discussing the 2007 Carnegie Report). *See generally* SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (2004).

⁶⁴ Mindfulness pioneer Jon Kabat-Zinn, who developed the internationally regarded program Mindfulness-Based Stress Reduction, *supra*, often refers to mindfulness practice as the hardest work we can do. *See* KABAT-ZINN, *supra* note 11, at 14.

Implicit in the wisdom tradition of mindfulness is the recognition that an attentiveness to ethical values serves to create a more stable internal environment from which a greater capacity to engage and sustain focused attention emerges. This in turn helps facilitate the cultivation of greater insight as well as a more natural inclination to think and act in alignment with one's own moral compass. In the Buddhist tradition, out of which this formulation finds its early roots, the ethical considerations to which one is to remain attentive and vigilant involve prescriptions not only found across Western religious traditions, but also embedded within the various rules regulating the legal profession. As law students learn the rules that evidence the profession's core values—such as candor, respect, and integrity—and as attorneys reflect on them, these ethical precepts can be integrated into and support the development of a mindfulness concentration practice and the cultivation of greater well-being.