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THINK LIKE A (MINDFUL) LAWYER: INCORPORATING
MINDFULNESS, PROFESSIONAL IDENTITY, AND EMOTIONAL
INTELLIGENCE INTO THE FIRST YEAR LAW CURRICULUM

*Nathalie Martin**

The week this article was due to the publisher, I found the February 3, 2014, issue of *Time* in my mailbox. The cover story? *The Mindful Revolution: The Science of Finding Focus in a Stressed-out, Multitasking Culture*.¹ The same week, the *New York Times* published one of its many recent articles dedicated to mindfulness, this one entitled *Breathing in vs. Spacing out*.² Also in the same week, my university sent a newsletter to the entire university community advertising a new course for employees on mindfulness.³ About the same time, a cartoon repeatedly found its way into my work mailbox. It pictures a mob of protestors in robes and shaven heads, chanting:

What do we want?!

Mindfulness!

When do we want it?!

* Frederick M. Hart Chair in Consumer and Clinical Law, University of New Mexico School of Law. This paper arose out of a program sponsored by the Association of American Law Schools at its 2014 Annual Meeting in New York City, January 2–5, 2014. It was presented on a panel sponsored by the Section on Balance in Legal Education entitled “The Many Connections Between Well-Being and Professionalism in the Practice of Law: Implications for Teaching.” I thank Stewart Paley, Fred Hart, Lu-in Wang, Alfred Mathewson, Marsha Baum, David Herring, Bonnie Stepelton, and Cheryl Burbank for their editorial comments and Stephen Ralph for his fine research assistance. I also thank all of the participants in the panel for their inspiration, including Larry Krieger, Todd Peterson, Elizabeth Mertz, Anneka Ferguson, and David Shearon. I thank the editors of the University of Arkansas at Little Rock Law Review and Dean Michael Schwartz for covering this topic, my students who agreed to allow me to use their journal entries and oaths here, and most of all, the University of New Mexico School of Law for being the kind of law school that cares enough about students to try new things and welcome their growth in all ways. Finally, I thank the other teachers who taught the Practicum class at the University of New Mexico School of Law in the Fall of 2013, who were game to try new things and who worked hard at implementing these ideas in their own classrooms.

1. *The Mindful Revolution: The Science of Finding Focus in a Stressed-out, Multitasking Culture*, *TIME*, Feb. 3, 2014, at cover, available at <http://content.time.com/time/covers/0,16641,20140203,00.html>.

2. Dan Hurley, *Breathing in vs. Spacing out*, *N.Y. TIMES* at MM14 (Jan. 19, 2014) http://www.nytimes.com/2014/01/19/magazine/breathing-in-vs-spacing-out.html?_r=0.

3. *New Professional Development Series Classes*, UNM AT WORK (U.N.M. Hum. Resources, Albuquerque, N.M.), Feb. 2014, at 1, available at <http://hr.unm.edu/newsletter/unm-at-work-february-2014/?page=1>.

NOW!⁴

Meanwhile, on my way to the conference in which I gave the paper memorialized in this article, the airport bookstore featured almost half a dozen books on emotional intelligence in the workplace. There is no question then that mindfulness and emotional intelligence are exploding in popularity right now, with everyone from health care professionals to big corporations. This article suggests that we follow suit in legal education and add more mindfulness and emotional intelligence training to our curricula.

To see if you think these things might help you or your students, ask yourself these questions: Do you ever wish for more time in the day? Do you think our students will face their own battles with time throughout their careers and personal lives? Have you exercised with such clarity of purpose that it set you up for a really productive and efficient day? Have you ever noticed how the clarity in those first moments of your day often allow you to solve an intractable problem or get two or three hours' worth of work done in just twenty or forty-five minutes?⁵ Finally, would you like to add more moments like this to your own day?

In my experience, mindfulness practices can help one use time more efficiently, find more moments of clarity in life, and lead a happier life. Emotional intelligence, on the other hand, can help one understand others better and improve performance in most careers. Because of my belief in and success with these practices, I recently began attempting to incorporate small doses of mindfulness and emotional intelligence into my law school classes. As I set out to do this, I learned that many other law teachers had already been doing the same thing. In fact, mindfulness training has already become a regular part of legal education. Meditation programs are now offered at twenty accredited law schools, and some states include meditation in continuing legal education programs on professionalism and ethics.⁶

4. Dan Piraro, *Bizarro* (Aug. 23, 2013), available at <http://media-cache-ec0.pinimg.com/736x/c4/b1/d1/c4b1d1a5c65270998435bf49dfc06572.jpg>.

5. See STEVEN KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE 45–46 (A.B.A. J. 2009) (1999). Keeva describes Steven Schwartz's "meditation on a brief" exercise where Schwartz is able to accomplish a great deal by working with those first morning moments. Schwartz reports that for the first fifteen minutes of his sitting meditation practice, before his mind is quiet, he takes time to think creatively about his work and specifically about problems or obstacles he will face that day. During this time, he outlines and plans briefs, settlement orders, and negotiations, plans structural changes for the firm, and makes his to-do list. Because the mind is not operating in a linear way at this precious time in the morning, it free-associates, and some mornings this allows Schwartz to complete a huge amount of work in a fraction of the normal time. *Id.*

6. Of these, a number of ABA-accredited schools offer yoga or meditation classes to students for law school credit, including Berkeley, Buffalo, University of California-Davis, University of Connecticut, University of Florida, Golden Gate, University of Miami, University of Missouri at Springfield, CUNY, and University of San Francisco law schools. See Stephanie West Allen, *Law School Contemplative, Mindfulness, and Meditation Programs*,

Over twenty-five law review articles have been written on the positive effects of yoga or meditation on the legal profession,⁷ and Harvard Law School has featured several symposia on these topics in connection with its world-renowned Harvard Program on Negotiation.⁸ Additionally, a recent issue of the *Journal of Legal Education* contained a series of scholarly articles dedicated to the positive influences that stronger mind-body connections among lawyers might have on the profession.⁹ The program for deans at the 2014 Annual Meeting of the Association of American Law Schools also contained a mindfulness component.¹⁰ Articles about mindful lawyers are also popping up in local bar association journals.¹¹ Even the American Bar Association has taken notice, publishing a recent article about lawyers who are learning to meditate in order to improve their practices and their lives.¹²

In this article, I add to the existing mindfulness literature by discussing other ways that law teachers might consider incorporating mindfulness and emotional intelligence into one or more of their classes. I also discuss the

IDEALAWG (Nov. 14, 2009, 12:38 PM), <http://westallen.typepad.com/idealawg/2009/11/law-school-contemplative-mindful-meditation-programs.html>. Leaders in bar associations have recognized the value of mindfulness, as reflected by Professor Scott Rogers's presentation "Mindfulness and Neuroscience: Enhancing Lawyer Effectiveness and Stress Reduction from the Inside Out" at the 2009 Florida Bar Convention, for which attendees received CLE credit. See Press Release, The Florida Bar, Florida Bar Convention To Be Held in Orlando June 24–27 (June 9, 2009), available at <http://www.floridabar.org/TFB/TFBPublic.nsf/WNewsReleases/74EE2F9DF1EDBF8E852575D000722A7A?OpenDocument>; MindfulLawyer, *Mindfulness & Neuroscience for Lawyers at the 2009 Florida Bar Convention Part I (First Half)*, YOUTUBE (July 3, 2009), <https://www.youtube.com/watch?v=KUnCoeba4VA&list=PL30DA4E05A6C148EF&index=5>; MindfulLawyer, *Mindfulness & Neuroscience for Lawyers at the 2009 Florida Bar Convention Part I (Second Half)*, YOUTUBE (July 3, 2009), <https://www.youtube.com/watch?v=nPj3m24I0jQ&list=PL30DA4E05A6C148EF&index=4> (YouTube videos are portions of Professor Rogers's presentation).

7. For a representative sampling, see Colin James, *Law Student Wellbeing: Benefits of Promoting Psychological Literacy and Self-Awareness Using Mindfulness, Strengths Theory and Emotional Intelligence*, 21 LEGAL EDUC. REV. 217 (2011); Richard C. Reuben, *Bringing Mindfulness into the Classroom: A Personal Journey*, 61 J. LEGAL EDUC. 674 (2012); David M. Zlotnick, *Integrating Mindfulness Theory and Practice into Trial Advocacy*, 61 J. LEGAL EDUC. 654 (2012).

8. See *PON Events*, HARV. L. SCH. PROGRAM ON NEGOTIATION, <http://www.pon.harvard.edu/events/> (last visited July 9, 2014).

9. Symposium, *Mindfulness*, 61 J. LEGAL EDUC. 634 (2012).

10. 2014 Annual Meeting Program, ASS'N AM. L. SCHS., <http://aals.org/am2014/Glance.pdf> (last visited July 16, 2014).

11. See, e.g., Stephanie West Allen, *A Better You: Becoming a Mindful Lawyer*, DOCKET (Jan. 22, 2014) available at <http://www.dbadocket.org/work-life-balance/a-better-you-be-coming-a-mindful-lawyer/>.

12. Leslie A. Gordon, *Mind over Matters: Law Professor Offers Lawyers a Meditation Retreat*, A.B.A. J., at 9, (Feb. 2014) available at http://www.abajournal.com/magazine/article/law_prof_teaches_meditation_techniques_for_lawyers/.

related idea of helping students develop a professional identity. Next, I focus on providing these tools in a first-year mandatory class and then attempt to provide a rationale, and a roadmap, for doing this.

After explaining briefly what mindfulness and emotional intelligence are, I review literature from other disciplines on the benefits of mindfulness practice and emotional intelligence training. Next, I discuss how this training might enhance the education of lawyers by improving their likelihood of success in the profession and, in turn, improving the quality of their lives both inside and outside their legal practices. Finally, I describe a few examples of materials that could be used in class, as well as some of the classes in which this material might be incorporated. As an example, I use our first-year mandatory professionalism class at the University of New Mexico School of Law called Practicum, in which we incorporated mindfulness and emotional intelligence in the fall of 2013. In concluding the article, I discuss whether now is the time to make the curricular changes I suggest here or whether it would be best to wait until these principles become more accepted in the profession.

I. MINDFULNESS AND EMOTIONAL INTELLIGENCE DEFINED

A. Mindfulness

Mindfulness is present awareness of one's thoughts as they arise and minute-to-minute awareness of one's existence. The concept of mindfulness can also include non-thinking or simply clearing the mind. In either case, mindfulness allows you to pay clear and particular attention to the things around you, so you can do what is best for yourself, those you care about, and the world at large, if you take it that far. Jon Kabat-Zinn is the father of modern secular mindfulness for stress relief and runs a large-scale institute affiliated with Massachusetts General Hospital that teaches mindfulness to people in all walks of life. As he explains, life is full of moments, not just years and decades.¹³ He asks if we can stop and be present, even for one moment:

A good way to stop all the doing is to shift into the "being mode" for a moment. Think of yourself as an eternal witness, as timeless. Just watch this moment, without trying to change it at all. What is happening? What do you feel? What do you see? What do you hear?¹⁴

13. JON KABAT-ZINN, *FULL CATASTROPHE LIVING: USING THE WISDOM OF THE BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS*, 3–19 (2d ed. 2013).

14. JON KABAT-ZINN, *WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE* 11 (10th anniversary ed. 2005).

If this idea is somewhat new to you, try it right now and see how you feel compared to how you felt before the exercise.¹⁵

Using mindfulness techniques to calm down and think clearly about your life, your work, and your impact on others is not new by any means. Various techniques have been used over thousands of years to bring about a sense of mindfulness.¹⁶ This sense can lead to periods of intense and deep concentration, enhanced productivity, a heightened ability to think through complex problems, and, of course, a calm, peaceful state of mind.

While the two concepts just mentioned above, deep intense thought on the one hand and a calm state of mind on the other, may seem at odds, they are not. Rather, stress hormones interfere with concentration by flooding the brain with cortisol and making it impossible to *think straight*.¹⁷ For this reason, mindfulness techniques can enhance one's ability to "think like a lawyer," a mindful, clear-thinking lawyer.

The intentional shift of awareness can even rewire neurological pathways to create long-term benefits in health and wellness.¹⁸ Thus, mindfulness can improve physical as well as emotional health.¹⁹ Mindfulness also can foster emotional intelligence, a topic discussed below. Emotional intelligence allows one to react to difficult situations in ways that enhance one's well-being as well as the well-being of others.

While mindfulness is ancient, it is no longer associated exclusively with hippies meditating on top of a mountain. Mindfulness-based techniques are now so mainstream that many large corporations use some of them in their employee training.²⁰ It is now used to train police officers to be less

15. Really, try it. As Jon Kabat-Zinn explains, most of us have never even tried to live in the moment, as we toggle between regretting the past and worrying about the future. *See id.* at xiv–xv. If you try this experiment for just a minute, you may find that you like the sensation enough to at least finish reading this article.

16. I'll refer to all of these techniques as "mindfulness," though the variety of techniques is endless in the modern world.

17. *See* C. Kirschbaum, O.T. Wolf, M. May, W. Wippich & D.H. Hellhammer, *Stress- and Treatment-Induced Elevations of Cortisol Levels Associated with Impaired Declarative Memory in Healthy Adults*, 58 LIFE SCI. 1475 (1996).

18. *See* CHADE-MENG TAN, *SEARCH INSIDE YOURSELF* 46–50 (2012).

19. *Id.*

20. Currently General Mills, Apple, Target, Google, IBM, Reebok, Nike, Yahoo, Procter & Gamble, and Aetna are listed among the top companies who encourage and have established programs for their employees to engage in the practice of meditation. Arianna Huffington, *Mindfulness, Meditation, Wellness and Their Connection to Corporate America's Bottom Line*, HUFFINGTON POST (Mar. 18, 2013, 7:22 PM), http://www.huffingtonpost.com/arianna-huffington/corporate-wellness_b_2903222.html. Many professional organizations, including some law firms, have embraced meditation and yoga techniques with an eye toward improving productivity, as well as employee health and wellness. These organizations have found that offering opportunities at work for yoga and meditation improves the performance and well-being of participants. Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. REV. 535, 549 (2011). Additionally, law firms such as Hale & Dorr and Nutter, McClennan

reflexive²¹ and to prepare marines for active duty.²² Many mainstream national magazines have recently devoted issues to mindfulness,²³ and the *New York Times*²⁴ and *Huffington Post*²⁵ publish articles on the topic too frequently to cite. At a time when print magazines are disappearing from newsstands,²⁶ two brand-new mindfulness print magazines are just hitting the press, *Mindful*²⁷ and *Live Happy*.²⁸

Empirical studies on mindfulness are also endless. One recent study showed that engaging in mindfulness techniques improved GRE scores.²⁹

& Fish of Boston; Leonard, Street & Deinard of Minneapolis; Burch, Porter & Johnson of Tennessee; O'Melveny & Myers of Newport Beach, California; and Dickstein Shapiro of Washington, D.C. have all reported using yoga, meditation, or some type of contemplative practice. *Contemplative Practices*, CUTTING EDGE L., <http://www.cuttingedge.law.com/page/contemplative-practices> (last visited July 9, 2014); Debra Cassens Weiss, *Yoga Is Becoming the New Golf, in NYC and Some Law Firms*, A.B.A. J. (Feb. 17, 2011, 9:22 AM), http://www.abajournal.com/news/article/yoga_is_becoming_the_new_golf_in_nyc_and_some_law_firms. Employees of these firms have expressed great satisfaction in these programs and have incorporated them into their daily routines. See TAN, *supra* note 18, at 5–6.

21. Line Goguen-Hughes, *Glimpse: Police Work*, MINDFUL, <http://www.mindful.org/mindful-magazine/police-work> (last visited Jan. 24, 2014).

22. Hurley, *supra* note 2. Marines use mindfulness for “[short] sessions to achieve a much different purpose: mental resilience in a war zone.” *Id.* Psychologist Amishi Jha “found that getting as little as 12 minutes of meditation practice a day helped the Marines to keep their attention and working memory,” in preparation for deployment, whereas no meditation or less than twelve minutes of meditation caused attention to decrease. *Id.* Jha has received a \$1.7 million, four-year grant from the Department of Defense. *Id.*

23. See, e.g., *The Mindful Revolution: The Science of Finding Focus in a Stressed-out, Multitasking Culture*, *supra* note 1.

24. See, e.g., Pauline W. Chen, *Easing Doctor Burnout with Mindfulness*, N.Y. TIMES (Sept. 26, 2013, 12:01 AM), <http://well.blogs.nytimes.com/2013/09/26/easing-doctor-burnout-with-mindfulness/?partner=rss&emc=rss>; David Hochman, *Mindfulness at Every Turn*, N.Y. TIMES, Nov. 3, 2013, at ST1, available at http://www.nytimes.com/2013/11/03/fashion/mindfulness-and-meditation-are-capturing-attention.html?pagewanted=all&_r=0; Alina Tugend, *In Mindfulness, A Method to Sharpen Focus and open Minds*, N.Y. TIMES, Mar. 23, 2013, at B5, available at <http://www.nytimes.com/2013/03/23/your-money/mindfulness-requires-practice-and-purpose.html?pagewanted=all>.

25. The *Huffington Post* has an entire web page dedicated to mindfulness. *HuffPost Mindfulness Research*, HUFFINGTON POST, <http://www.huffingtonpost.com/news/gps-mindfulness-research/> (last visited Jan. 27, 2014).

26. The venerable magazine *Newsweek* published its last print issue on December 31, 2012. Bob Adelman, *Newsweek's Last Print Issue Is December 31*, NEW AM. (Dec. 26, 2012), <http://www.thenewamerican.com/economy/sectors/item/14031-newsweek%E2%9999s-last-print-issue-is-december-31>.

27. See MINDFUL, Jan. 24, 2014, <http://www.mindful.org/mindful-magazine>.

28. See LIVE HAPPY, July 17, 2014, <http://livehappymagazine.com/>.

29. Michael D. Mrazek, Michael S. Franklin, Dawa Tarchin Phillips, Benjamin Baird & Jonathan W. Schooler, *Mindfulness Training Improves Working Memory Capacity and GRE Performance While Reducing Mind Wandering*, 24 PSYCHOL. SCI. 776, 776 (2013). This study found that “[m]indfulness training improved both GRE reading-comprehension scores and

The Great Courses, an online, audio, and video portal for learning on thousands of topics, featured an advertisement for their mindfulness course in two-dozen national magazines in the month of January 2014.³⁰ Clearly, mindfulness is either exceptionally trendy at this moment in history or its benefits are starting to be recognized in many conventional settings. Either way, offering some mindfulness techniques to developing lawyers at a minimum might help them stay calm, think more clearly, and understand other people better.

The effects of meditation on the lawyer's mind are significant, as noted by Professor Charles Halpern. In his book, *Making Waves and Riding the Currents*,³¹ this former CUNY School of Law Dean and Arnold & Porter attorney talks about the first time he ever experienced meditative moments, which occurred on a canoe in the lakes of northern Ontario.³² These experiences later led him to a more formal meditation practice, which he claims altered his life and law practice in measurable positive ways.³³ As he explains:

I found that in the midst of turmoil I was able to respond to strong pressure with less anger and reactivity. I was able to see things more clearly. I was able to empathize with a broad range of people and identify the things we shared. . . .

Each of us can return to points in our lives when we had an awakening—an insight that suggested that the world was larger than what we had thought it was. Often these are not the sort of incidents that show up on our résumés, and we sometimes don't talk about them with the people we work with. By sharing such incidents in my life, I want to encourage each of us to lift up such events, to reflect on how they enrich our lives and how they can be more fully integrated into our work for a more peaceful and just world.³⁴

working memory capacity while simultaneously reducing the occurrence of distracting thoughts during completion of the GRE and the measure of working memory.” *Id.* These results suggest that cultivating mindfulness is an effective and efficient technique for improving cognitive function, with wide-reaching consequences.

30. See THE GREAT COURSES, <http://www.thegreatcourses.com/greatcourses.aspx> (last visited July 18, 2014).

31. CHARLES HALPERN, *MAKING WAVES AND RIDING THE CURRENTS* (2008).

32. *Id.* at 4–5.

33. *Id.*

34. *Id.* at 5. Similarly, law professor Leonard Riskin has meditated for many decades and currently teaches dispute resolution and mindfulness in law at the University of Florida as well as Northwestern School of Law. He recounts the many benefits of meditation for lawyers in a groundbreaking 2002 law review article. According to one Hale and Dorr attorney that Riskin quotes, meditation helps her become “better able to notice each moment and

B. Emotional Intelligence

If mindfulness is centuries old, its distant relative emotional intelligence is quite modern. The phrase, developed by Daniel Goleman in his internationally acclaimed book *Emotional Intelligence*,³⁵ refers to the ability of people to become talented in any field through self-awareness, self-regulation, awareness of the feelings and reactions of others, and highly effective communication skills,³⁶ all critical to the modern practice of law. Empirical data show that people with high emotional intelligence scores (coined EQs, after the IQ abbreviation) excel in leading others as compared with people with lower EQs.³⁷ Data also show that with training, EQ skills can improve over time.³⁸

For example, in his mindfulness program at Internet giant Google,³⁹ Chade-Meng Tan was able to show empirically that mindfulness practices increase professional success by improving emotional intelligence and interpersonal interactions.⁴⁰ In another example, investment advisors at American Express who participated in mindfulness training made more money on average than those without the training.⁴¹ As Chade-Meng Tan explains throughout his book, *Search inside Yourself*, one can build emotional intelligence skills. The techniques Tan describes also set one on the path to experiencing flow.⁴² Flow involves “being completely involved in an activity for

take advantage of what it offers for my work and life.” Other lawyers who attended the programs at Hale and Door reported a high rate of success achieving the following goals:

- thinking through things and responding more effectively
- managing stress better and not being so affected by it
- being more tolerant” and listening better
- paying [more] attention to other people
- getting to know people better
- developing harmony between work-self and other-time-self.

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, 41 & n.179 (2002). Another meditator that Professor Riskin quotes claims that meditation causes him to feel better, be more efficient, be less likely to jump to conclusions, and be “more likely to see any issue from more angles, which. . . is the key to solving legal problems.” *Id.* at 44 (alteration in original).

35. DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (1995). This book spent more than one-and-a-half years on the *New York Times* Best Seller list. Goleman also developed the argument that non-cognitive skills can matter as much as IQ for workplace success. *Id.* at 34–36.

36. *See id.* at 283–84.

37. *Id.* at 34, 148–63.

38. GOLEMAN, *supra* note 35, at 238–39.

39. TAN, *supra* note 18, at xi.

40. *Id.* at 83.

41. *Id.*

42. *Id.* at 132.

its own sake,” with focused attention so that the individual reaches the peak of their skill and capacity for that activity.⁴³

Tan further explains that the main difference between good and great leaders is that great leaders have compassion for others that shows and are deeply ambitious for the greater good, whether that is the good of the organization or some greater societal good.⁴⁴ In other words, those trained in mindfulness had the unique capacity to show both great ambition and personal humility, as well as a concern for something greater than their own advancement.⁴⁵

In *Emotional Intelligence 2.0*, one of many popular books on this subject, the authors describe the steps involved in improving emotional intelligence.⁴⁶ First one becomes able to recognize one’s own emotions and how they affect one’s thoughts and behavior, identify one’s strengths and weaknesses, and gain self-confidence where it is lacking.⁴⁷ This is the self-awareness stage. As the authors of *Emotional Intelligence 2.0* explain, emotions can help you and they can hurt you, but you have no say in the matter until you understand them.⁴⁸ Next, in step two, one becomes more able to self-regulate, meaning to control impulsive feelings and behaviors, manage emotions in healthy ways, take initiative, follow through on commitments, and adapt to changing circumstances.⁴⁹ The third step is awareness of others or “social awareness,” which allows one to understand the emotions, needs, and concerns of other people, pick up on emotional cues, feel comfortable in any social setting, and recognize the power dynamics in a group or organization.⁵⁰ Finally, in step four, emotional intelligence training helps one manage relationships by teaching how to communicate clearly, inspire and influence others, work well in a team, and manage conflict.⁵¹ There is no question that

43. *Id.* at 132, 135–36. Examples of skills enhanced by flow include rock climbing and brain surgery. *Id.* at 135.

44. *Id.* at 201.

45. TAN, *supra* note 18, at 201.

46. TRAVIS BRADBERRY & JEAN GREAVES, *EMOTIONAL INTELLIGENCE 2.0* (2009) [hereinafter EQ 2.0]; *see also* GOLEMAN, *supra* note 35; JESSICA CAMBRIDGE, *EMOTIONAL INTELLIGENCE* (2014); TRAVIS BRADBERRY & JEAN GREAVES, *THE EMOTIONAL INTELLIGENCE QUICK BOOK* (2003).

47. *See* EQ 2.0, *supra* note 46, at 23–27. Of course, confidence in law students isn’t always lacking. As teachers, sometimes we need to strengthen the weak and weaken the strong. Some students think they already know it all, and for them the lesson is in learning that in reality they do not.

48. *See id.* at 12.

49. The authors of EQ 2.0 call this “self-management.” *See* EQ 2.0, *supra* note 46, at 32–33.

50. *See id.* at 36–39.

51. *See id.* at 44–45.

these skills are highly useful to attorneys. Nor is there any doubt that most lawyers lack many of these skills.⁵²

The authors of *Emotional Intelligence 2.0* researched various businesses and identified people with high EQs.⁵³ They then had people with whom these high EQ persons worked describe the management styles of the people with these high EQ scores.⁵⁴ Some of those traits are described here:

- takes time to assess a situation before offering suggestions for change
- is calm, cool, collected, and sensitive to the feelings of others, yet direct and to the point
- is open and authentic, aware of tone and impact of communications on others
- is able to help others separate feelings from logic
- handles confrontation well
- can spot and address an elephant in the room
- can read a room and the emotions of others⁵⁵

Recognizing and controlling emotions is a huge part of achieving both flow and emotional intelligence. While it is impossible to stop an emotion from occurring (it'll just bubble up somewhere else if you try), we do have the power to welcome the emotion and then let it go, and perhaps with practice, to let it go immediately.⁵⁶ Chade-Meng Tan describes this through the Buddhist metaphor of "writing on water."⁵⁷ One can train oneself to let the emotion come, but then to let it go in the same way that writing on water disappears.⁵⁸

In summary, mindfulness and emotional intelligence often go hand in hand. By becoming able to control our stress and our emotions, we build better self-awareness, which unquestionably leads to a more successful career, not to mention a more satisfying personal life. This is because people who accurately assess their own strengths and weaknesses are more successful both at work and at home.⁵⁹

52. Lawyers are known to talk all the time and to be pessimistic, argumentative, and poor listeners.

53. EQ 2.0, *supra* note 46, at 28–29, 34–35, 40–41, & 46–48.

54. *See id.*

55. *Id.*

56. TAN, *supra* note 18, at 106.

57. *Id.*

58. *Id.*

59. *See* EQ 2.0, *supra* note 46, at 25–26.

II. WHY ADD MINDFULNESS AND EMOTIONAL INTELLIGENCE TO LEGAL EDUCATION?

If mindfulness and emotional intelligence can allow one to gain self-knowledge, develop empathy, promote kindness, and use better interpersonal skills, can mindfulness improve the practice of law? Assuming these traits are desirable in lawyers, the answer is yes. The advantages for both lawyers and clients are obvious.

A. A Few Missing Links in Legal Education

Legal education excels at many things, but it is also lacking in significant ways. Legal educators often fail to address or ameliorate lawyer unhappiness, lack of empathy skills in students, the effects of excess technology on the profession, or the excessive stress law students and lawyers will face throughout a lifetime. Here, I briefly discuss these problems and explore how mindfulness and emotional intelligence training can help with them.

1. *Facing and Addressing Lawyer Misery*

Research by David Shearon suggests that incoming law students arrive at law school with average personal satisfaction levels but that these satisfaction levels drop precipitously by the time they leave law school.⁶⁰ In short, law students are less happy after they finish law school than before they started.⁶¹ Think about that for a minute—students become less happy in our care.

No one is completely sure why legal education has this effect on future lawyers, but some evidence suggests that the method of education is partly to blame.⁶² For example, Elizabeth Mertz's long-term study of contracts classroom dialogue in law schools across the nation shows that law school

60. See Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 524–26 (1998).

61. See *id.* at 526–32. See generally David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 CAMPBELL L. REV. 61 (1994); Susan Daicoff, *Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997); Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879 (1997); B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357 (2009).

62. Peterson & Peterson, *supra* note 61, at 360.

can be a demeaning experience.⁶³ She highlights numerous examples of instances in which teachers created a demeaning environment for students when it served no learning purpose and indeed created an environment hostile to learning.⁶⁴

For various reasons, attorneys themselves are a notoriously unhappy group.⁶⁵ Some of them were likely pessimistic and unhappy before they entered law school, as Martin Seligman has found that lawyers in general are more likely to be depressed compared to the general population.⁶⁶ Additionally, some students seem to learn unhappiness and lack of life satisfaction *in* law school and carry it with them into their practice.⁶⁷ This is likely in part because of the demeaning educational environment discussed above, but also because we train students to find problems in situations in order to protect clients. Lawyers also have higher divorce rates, alcoholism rates, and rates of depression than the general population.⁶⁸ These ailments have been attributed to excess stress and negative thinking.⁶⁹

Thankfully, some data suggest that mindfulness techniques like meditation can improve attorney happiness by creating perspective and balance.⁷⁰ Moreover, adding doses of positive psychology to law school coursework, as Todd Peterson does at George Washington, and as is discussed in more detail below, can stem this trend in lawyer unhappiness.⁷¹

63. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER"* 4, 7–11, 120–27 (2007). The entire book contains many similar examples. These are just a few examples.

64. *Id.*

65. See Peterson & Peterson, *supra* note 61, at 358.

66. Martin E.P. Seligman, *Why Are Lawyers So Unhappy?*, *LAWYERS WITH DEPRESSION*, <http://www.lawyerswithdepression.com/articles/why-are-lawyers-so-unhappy/> (last visited Jan. 30, 2014).

67. 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, 883 (2007); Riskin, *supra* note 34, at 10.

68. Riskin, *supra* note 34, at 10–11.

69. See *id.* at 10–13.

70. SCOTT L. ROGERS, *MINDFULNESS FOR LAW STUDENTS* 1–2 (2009). This makes practical sense if stress and negative thinking patterns are the primary causes of the unhappiness. As Jon Kabat-Zinn quotes from an ancient source, “If your mind isn’t clouded by unnecessary things, this is the best season of your life.” KABAT-ZINN, *supra* note 14, at 16. Additionally, in his book about the mindfulness program at Google, *Search inside Yourself*, Chade-Meng Tan explains why it can feel good to stop and experience the here and now:

By letting go of grasping and aversion, we can fully adopt the letting-go mind and also fully experience life in its glorious Technicolor detail. In fact, we may be able to experience life more vividly with the letting-go mind because it frees us from the noisy interference of grasping, aversion, and suffering.

TAN, *supra* note 18, at 110.

71. See Peterson & Peterson, *supra* note 61, at 361–65.

2. *Helping Students Retain and Build Empathy Skills Throughout Law School*

In law school, we purposely teach students not only to think about the worst things that can happen but also to look for fault in others. We teach students to look for defects and holes in arguments. We call it “issue spotting,” learning to think like a lawyer, and developing critical thinking skills. Law professor Charles Halpern describes this process aptly in his book *Making Waves and Riding the Currents* when he described his own law school experience:

We were learning the language and the tough demeanor of lawyer discourse. Our vocabulary became skewed. Being tough-minded, hard-nosed, and thick-skinned were virtues; there was little talk of altruism or kindness. During a contract negotiation, for example, our job as lawyers was to imagine all the negative outcomes that might possibly happen and draft contract language that would protect our clients’ interests in the event of fraud or chicanery by the other contracting parties. The law presented a Darwinian world, and the possibility that people would act out of selfless or generous motives was considered highly unlikely. I found it alarmingly easy to slip into this mindset—suspicious, lawyerly, aggressive.⁷²

Perhaps it is no wonder that students’ interpersonal skills suffer toward the end of law school, after receiving this sort of training for two years or more. In my own experience and those of other clinical law teachers with whom I have spoken, students who enter our mandatory clinical law program sometimes need help reviving their empathy skills. After two and one-half years of law school education, there is sometimes a robotic quality to their thoughts and actions. This can perhaps be attributed to the strong emphasis on analytical skills in law schools, as opposed to training in and emphasis on interpersonal skills. I also teach in the first year and notice that students come into law school with intact empathy skills but somehow lose them in the process. We at University of New Mexico School of Law (“UNM Law”) are thinking about how to help students retain these empathy skills.

We are not sure if it is just the emphasis on analytical skills or the demoralizing nature of the law school experience, but we do know that law school can change students. We are equally unsure whether the resulting robotic quality we sometimes see is helpful to students or their clients, or necessary to learning to “think like a lawyer.” To ameliorate these concerns, we added empathy to the skill sets we attempted to teach.

72. HALPERN, *supra* note 31, at 57.

3. *Helping Students Learn to Use Technology More Beneficially*

Studies suggest that some college students “may experience lapses in attention as early as the first thirty seconds of a lecture with additional lapses occurring in ever-shortening cycles throughout the lecture segment.”⁷³ Law student and lawyer success, however, requires intense and sustained attention,⁷⁴ something with which technology can interfere.

In their article, *On Engagement: Learning to Pay Attention*, Lisle Baker and Daniel Brown tell this story:

[Malcolm] Smith, a Democrat, was the New York State Senate Majority Leader who famously fiddled with his BlackBerry, checking e-mails, while billionaire Thomas Golisano, a major independent political player in New York, was trying to talk to him. Golisano, who had made a special trip to Albany to meet with Smith, was furious. “When I travel 250 miles to make a case on how to save the state a lot of money and the guy comes into his office and starts playing with his Blackberry, I was miffed,” he told reporters.

As a response, Mr. Golisano “went to the Republicans and told them he’d be happy to unseat Smith, perhaps in the hopes of having him replaced with someone who could pay attention for a few minutes.” Golisano was successful, and Smith was unseated.⁷⁵

B. *Helping Relieve Law Student and Lawyer Stress*

Lawyers have higher than average depression, alcoholism, and divorce rates, presumably due to the stress of the job.⁷⁶ Law school itself is known to be stressful. Moreover, studies show that anxious people are more likely to

73. R. Lisle Baker & Daniel P. Brown, *On Engagement: Learning to Pay Attention*, 36 U. ARK. LITTLE ROCK L. REV. 348 (2014) (citing Diane M. Bunce et al., *How Long Can Students Pay Attention in Class? A Study of Student Attention Decline Using Clickers*, 87 J. CHEMICAL EDUC., 1438, 1442 (2010)).

74. See *id.* at 348 (citing M.H. Sam Jacobson, *Paying Attention or Fatally Distracted? Concentration, Memory, and Multi-Tasking in a Multi-Media World*, 16 J. LEGAL WRITING INST. 419, 419 (2010)).

75. *Id.* at 340–41 (citing PAUL HAMMERNESS ET AL., ORGANIZE YOUR MIND ORGANIZE YOUR LIFE: TRAIN YOUR BRAIN TO GET MORE DONE IN LESS TIME, at xv–xvii (2011)). Baker and Brown also report on a neurosurgeon who made personal phone calls during an operation, a nurse who checked airfares during surgery, and “a poll showing that half of technicians running bypass machines had admitted texting during a procedure.” See *id.* at 340 (quoting Matt Richtel, *As Doctors Use More Devices, Potential for Distraction Grows*, N.Y. TIMES (Dec. 14, 2011)).

76. Peterson & Peterson, *supra* note 61, at 359; Riskin, *supra* note 34, at 10–11.

rely on the advice of others and less on their own judgment and are less able to discern good versus bad decisions.⁷⁷

Mindfulness practices, on the other hand, are well-known for improving peace of mind by relieving stress.⁷⁸ In his book *Full Catastrophe Living*, Jon Kabat-Zinn describes his eight-week Mindfulness-Based Stress Reduction (MBSR) program at the University of Massachusetts Medical Center, through which very sick and suffering individuals have found great relief through meditation and yoga.⁷⁹ Moreover, as Kabat-Zinn explains, bringing mindfulness to any activity can transform that activity into a form of meditation.⁸⁰

By improving state of mind, clarity of thinking, and efficiency, mindfulness can arguably help lawyers experience less stress and more career satisfaction. Mindfulness also may help lawyers provide better and more efficient services to clients through better listening and negotiation skills,⁸¹ and it may also help reduce the number and severity of lawyer mistakes.⁸² Perhaps more obviously, mindfulness tools can improve conflict resolution, foster ethical behavior, and avoid the negative emotions that sometimes get in the way of producing the best possible result for a client.⁸³ Surely if mindfulness has been embraced by various health care professionals and businesses around the country and the world to both improve morale and the bottom line, the legal profession can benefit as well. Below I discuss how this might be done, in practical and simple, yet effective, ways.

III. A FEW PRACTICAL WAYS TO INTEGRATE MINDFULNESS AND EMOTIONAL INTELLIGENCE INTO THE LAW SCHOOL CURRICULUM

Those law professors who wish to incorporate mindfulness and emotional intelligence into their courses have many opportunities to do so. This section provides some examples. Incorporating mindfulness and emotional intelligence provides obvious benefits for practice-based courses like clinic,

77. See Francesca Gino, Alison Wood Brooks & Maurice E. Schweitzer, *Anxiety, Advice, and the Ability to Discern: Feeling Anxious Motivates Individuals to Seek and Use Advice*, 102 J. PERSONALITY & SOC. PSYCHOL. 497 (2012); see also Eduardo Dias-Ferreira et al., *Chronic Stress Causes Frontostriatal Reorganization and Affects Decision-Making*, 325 SCIENCE 621, 621 (2009) (finding that chronic stress makes one unaware of changes in the environment that should cause a change in behavior, impairing good decision-making).

78. See generally KABAT-ZINN, *supra* note 13 (an entire book about using mindfulness to relieve stress and the first time that mindfulness was taught in this wholly secular way on a large scale in the West).

79. *Id.* at xxv–xlvi.

80. *Id.* at 98.

81. Riskin, *supra* note 34, at 46–59.

82. See *id.* at 46–48.

83. See *id.* at 46–48, 64.

externships, and dispute resolution classes, all of which rely heavily on interpersonal skills. Another obvious choice is professional responsibility classes, where calm, clear thinking can help one make wise choices.⁸⁴ These are all good places to start, and I have myself attempted to use these techniques in clinic and in upper-level doctrinal courses over the years. These concepts can also be used in first-year classes, though this may be harder to accomplish, while simultaneously teaching students legal analysis and the ability to “think like a lawyer.”⁸⁵

In any case, in the fall of 2013, at UNM Law we began incorporating small elements of mindfulness and emotional intelligence in our curriculum through additions to an existing first-year mandatory professionalism class called Practicum. The class is taught by six to eight teachers in groups of twenty students per class, though for half of the classes, the students meet in one large group.⁸⁶ My own small-group class was taught with another law professor, Fred Hart. The class was designed to ameliorate some of the conditions discussed above, namely lawyer unhappiness, lost empathy skills, stress, and the lost art of paying attention.⁸⁷ Practicum has been a part of the

84. My colleague Marsha Baum has for years drawn upon her training in wisdom in her professional responsibility classes, such as OILS 553, *The Role of Wisdom in Adult Learning and Culture*. See Marsha Baum, *The Culture & Adult Learning Professional Development Certificate*, U.N.M. ORG. INFO. & LEARNING SCI., <http://oils.unm.edu/academic-programs/professional-certificates/the-culture-adult-learning-certificate.html> (last visited Feb. 6, 2014).

This course explores the role of wisdom from the point of view of various cultural traditions and academic disciplines. Students will examine and better understand (a) the historical perspectives of wisdom, (b) the attributes of those who are wise, (c) the current psychological, biological, and socio-cultural theories of wisdom, (d) the relationship between knowledge and wisdom, (e) the value of critical self-reflection and moral reasoning to wisdom, (f) the role of story and myth in developing wisdom, and (g) how experience and wise mentors foster wisdom.

Id. Professor Baum also incorporates concepts of cultural autobiography, based on classes taken and discussions with Alicia Chavez in the wisdom program. *Id.*

85. Implicit in this “think like a lawyer idea” is that one can no longer think like a living, caring, breathing human being, but only like a lawyer. As a profession, we have far more thinking to do about this concept than will be tackled here.

86. It is hard to overemphasize the importance of faculty buy-in and teacher dedication to this goal. We had a particularly malleable and open-minded group teaching Practicum in the fall of 2013, and the result was a reasonably successful class. Nevertheless, it is obviously easier to do something like this alone.

87. Here is how our syllabus described the need for the class and the possible benefits to students:

Empirical studies show that multitasking and excessive stress interferes with clear thinking. Indeed, calm focused people are better at what they do, whatever profession they enter. They are also more efficient and work better with others. Calm focused people are also happier and have a better sense of their own priorities and values.

UNM Law curriculum for over a decade but has changed in content over time.⁸⁸ It also changes a bit each year, based upon the emphasis each new director wishes to bring to the class.

Going into 2013, the Practicum class already contained many useful components.⁸⁹ It introduced students to the profession through attorney panels.⁹⁰ It also included presentations about the job market by career services, a segment on access to justice issues so students could see where the legal need is in our community and possibly help fill it, and ethics exercises.

The class also contained a professional identity project called the Hugh Muir Oath Project, in which students wrote their own codes of professional conduct,⁹¹ as well as a six-hour public service requirement designed to acclimate students to the public service obligations of attorneys in society. Finally there was a stress relief segment that alerted students to some of the personal risks of the profession, such as increased likelihood of alcoholism and depression.

Dr. Martin Seligman studies lawyer satisfaction and has found that while they are often well paid, lawyers can be unsatisfied, primarily because they tend to be pessimists, they sometimes lack control over their work lives, and they work in one big win-lose system, namely the legal system. There are proven ways to counterbalance these conditions and we are here to help you learn them. As such, this class is designed to:

- help you learn about the legal system and the professional role of attorneys;
- help you create space in your life for activities that keep you balanced as a human being;
- help you control stress and thus enhance your academic and professional success;
- help you improve your interpersonal skills;
- allow you to develop a support system at the law school by getting to know some of your peers in an unconventional setting; and
- allow you to develop a relationship with a faculty member that is supportive both inside and outside the classroom.

See Professor Nathalie Martin, et.al, Practicum Syllabus at 1 (Aug. 18, 2013) (on file with author).

88. This course was originally built loosely on a similar 1L course at Harvard Law School. See Todd D. Rakoff, *The Harvard First-Year Experiment*, 39 J. LEGAL EDUC. 491 (1989). We used the course to help students integrate all of the doctrinal classes offered in the fall of the first year.

89. I thank Professor Barbara Bergman for originally adding many of these components in prior years.

90. Groups of alumni seem to love to come and talk about their jobs, hobbies, and work-life balance.

91. Hugh Muir was a preeminent tax professor on the UNM Law faculty from 1968 to 1983. At the time, he was considered the conscience of the faculty and was always concerned about doing the ethically right thing in every instance, be it hiring, handling student complaints, or any other law school business. The oath was named after him because of his extreme professionalism. Professor Marsha Baum uses the same oath that students write as first-year students again in her ethics class, creating a wonderful synergy and opportunity to reflect.

Other than changing the emphasis of this last unit, all of the existing elements of the course remained intact. We then added

- a book on mindfulness for professionals,
- weekly journal assignments,
- a class on positive psychology,
- exercises on developing empathy,
- a few classes on emotional intelligence, and
- mandatory balance time.

Some of these course components, whether they are new or existing, are discussed below.

A. Choosing or Preparing Course Materials

We assigned a published book on mindfulness and emotional intelligence, *Search inside Yourself*, which describes Google's workplace mindfulness.⁹² We also considered a few other books, including Steven Keeva's wonderful book *Transforming Practices*,⁹³ *The Happy Lawyer*,⁹⁴ *Psychology for Lawyers*,⁹⁵ and even Jon Kabat-Zinn's Mindfulness-Based Stress Reduction book entitled *Full Catastrophe Living*.⁹⁶

While it is an excellent book, most of our practicum teachers ultimately felt in retrospect that *Search inside Yourself* focused too much on mindfulness and emotional intelligence and not enough on the other things we were trying to teach in the course, particularly for a mandatory class.⁹⁷ We ac-

92. TAN, *supra* note 18.

93. KEEVA, *supra* note 5.

94. NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER* (2010).

95. JENNIFER K. ROBBENNOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS* (2013).

96. KABAT-ZINN, *supra* note 13.

97. As one student reported in an e-mail after the semester was over:

As we discussed in practicum, the law can be an incredibly stressful field and the key to overcoming this is, I believe, finding an area of the law that you really enjoy. People would ask me "what type of law are you going into" throughout the semester and I typically responded that I didn't know. After that panel we had in practicum, I've added consumer protection law to my response. . . .

Additionally, I wanted to thank you for teaching the practicum course. I found it incredibly helpful and have started to do some yoga and meditation in response to reading *Search inside Yourself*. I believe the course helps reduce stress, put our law classes in perspective, and brings us together as a section. I found it incredibly worthwhile and indicated so on my course evaluation.

accompanied our published book with a reader that included statistics about the demographics of the profession, so students could see what the numbers of minority and women lawyers were both nationally and in our state; readings on access-to-justice issues;⁹⁸ a negotiation based upon an emotionally charged multiparty problem in New Mexico and other border states;⁹⁹ and excerpts from books about how to get more meaning from the practice of law.

For next year, we plan to use what we learned and put all of the required course material in a reader that we will pass out in the first class. Professor Hart and I plan to invite students to purchase *Search Inside Yourself* on their own after they have learned about mindfulness during their first class. Other teachers can recommend other books more to their liking. This approach will allow the individual teachers to assign what they would like to discuss in their own small group classes.

B. Asking Students to Do Weekly Journals: Great Benefits and Small Burdens

Students in Practicum were asked to keep an online journal to which they would add an entry each week. This section describes the rationale behind these journals, as well as some of the benefits and burdens of having students do this very personal work. Though I am not sure we realized it at the time we assigned the journals, the journal entries were the backbone of our course and became the course's defining feature. Class time could always be organized around the week's journal topic, which ranged from stress relief, to dealing with difficult conversations or people, to finding one's niche in the legal community. I discuss a few of the particular journal topics in the contexts of the various topics discussed below, but I set out the basics of journaling here because it became such a centerpiece of our course.

Journaling is a well-known way to improve emotional intelligence.¹⁰⁰ In my experience, journaling can also bring up a lot of otherwise repressed emotions and can be difficult for people who are not emotionally healthy to begin with. Nevertheless, clinical law professors have long recognized the benefits of student journals for promoting self-awareness and reflection, enhancing learning from experience, releasing stress, and developing life-long self-directed learning habits.¹⁰¹ While less common, journaling has also

98. LISA G. LERMAN & PHILIP G. SCHRAG, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW* 819–25 (2d ed. 2008).

99. This multiparty negotiation is available upon request and involves the Catholic Church, U.S. Border Patrol, and the international organization, No More Deaths.

100. See, e.g., E.Q. 2.0, *supra* note 46, at 79.

101. See Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic*, 75

been used in many non-clinical settings in legal education.¹⁰² Professor J.P. Ogilvy has used journaling in the context of a live-client clinic, an academic support program, an externship program, simulation courses, and traditional classrooms.¹⁰³ He has also studied the use of journals in other disciplines¹⁰⁴ and shares these thoughts:

As I reviewed the thousands of journal entries that I collected in preparing to write this article, I was struck by the quality of reflection that the journals exhibit. . . . The journals provide a fascinating and enlightening window into the thinking and the lives of my students.

For students in any instructional setting, the journal encourages writing; probing beneath the surface of problems; thinking more deeply about the materials, products, and processes of learning; and taking more responsibility for their own learning. It offers some students a less threatening alternative to in-class questions and can provide a safe place for healthy release of the intense emotional stress that is generated by the law school experience, particularly in first-year courses. For teachers in non-clinical classes, the journal assists in surfacing misconceptions that frequently go undetected until the final examination. Moreover, by engaging the teacher in a written academic dialogue with a student for an extended period of time, the journal can generate a level of personalized instruction not commonly found in the large, traditional classroom.¹⁰⁵

Other examples of the use of journals in law school are not hard to find. For example, at the University of Cumbria in the United Kingdom, educators help students develop their own personal development plans

NEB. L. REV. 872, 895–97, 908–09 (1996) (discussing the use of journaling by clinic students and describing how the journaling practice reinforces the values and skills learned through real-world experiences); Gerald F. Hess, *Learning to Think Like a Teacher: Reflective Journals for Legal Educators*, 38 GONZ. L. REV. 129, 139–44 (2002–2003) (discussing the benefits of reflective journals for legal educators and practitioners, as well as for improving legal education or student outcomes). See generally William P. Quigley, *Reflections from the Journals of Prosecution Clinic Students*, 74 MISS. L.J. 1147 (2005) (discussing the use of reflective journals by students enrolled in the Loyola University New Orleans School of Law prosecutorial clinical program, and outlining the effectiveness of journaling on students' perceptions of legal issues and their learning process).

102. See, e.g., John Lande, *Lessons from Teaching Students to Negotiate Like a Lawyer*, 15 CARDOZO J. CONFLICT RESOL. 1, 25–27 (2013) (discussing the use of reflective journals for students in a negotiations course, and outlining the advantages of having journals as a part of the course to a student's understanding of the material and ability to think like a lawyer).

103. J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55, 58 (1996) (discussing the use of journals by the author in substantive classes and the benefits of journaling for students outside the clinical setting, including the idea that journaling brings students' misconceptions to the surface and provides immediate student feedback and input).

104. *Id.* at 58–59.

105. *Id.* at 59–60.

through which they learn career awareness and develop the essential skills of a lawyer.¹⁰⁶ This is done in part through reflective learning or journaling.¹⁰⁷ In addition to these *student* journaling experiences, at least one law professor journals on his own teaching twice a week in order to improve his teaching.¹⁰⁸

Journaling has also been used in other professional education for some time.¹⁰⁹ Sources on emotional intelligence in general also often suggest journaling to help people become more aware of their own tendencies and to make corrections in behaviors that are harmful, either personally or professionally.¹¹⁰

As a result of this research from various disciplines, we decided to ask the first-year class to create an online journal log that they would write in at the end of each week of law school. Some of the entries allowed the first-year law students to write about whatever they liked, while others asked them to write about a particular topic.¹¹¹

106. Sefton Bloxham, Fiona Boyle & Ann Thanaraj, *Using E-portfolios to Support PDP and Reflective Learning within the Law Curriculum: A Case Study*, 2009 J. INFO. LAW & TECH., no. 3, § 1, http://go.warwick.ac.uk/jilt/2009_3/bloxham (discussing the use of e-portfolios and journaling techniques in the University of Cumbria LLB program, and noting the positive effect journaling has on individual growth and learning within the law school curriculum); see also Sefton Bloxham & Andrea Cerekova, *Reflective Learning, Skills Development and Careers Management Online—An Evaluation of a First Year Law Module*, 2007 J. INFO. LAW & TECH., no. 1, § 2, http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2007_1/bloxham_cerekova/bloxham_cerekova.pdf (describing the use and reasoning behind the implementation of a PDP module within the law school curriculum and the positive effect of the module on students' learning and growth throughout the program).

107. Bloxham, Boyle & Thanaraj, *supra* note 106, §§ 1, 4.6, 5.6.

108. See Hess, *supra* note 101, at 129–30.

109. See PEDAGOGY IN A NEW TONALITY (Peter Gouzouasis ed., 2011) (discussing the use of new creative techniques in K–12 education to transition from teachers being traditional practitioners to becoming pedagogical in their approaches to teaching); CHRISTOPHER JOHNS, BECOMING A REFLECTIVE PRACTITIONER (2000) (discussing the use of reflective thought and journaling by practitioners, particularly nursing practitioners, to better understand their roles and how to improve patient care and productivity through holistic and intuitive practices); JACK MEZIRROW ET AL., TRANSFORMATIVE LEARNING IN PRACTICE: INSIGHTS FROM COMMUNITY, WORKPLACE, AND HIGHER EDUCATION (2009) (discussing how journaling can be used to empower community leaders and minorities in workplace and higher education scenarios, and illustrating the benefits of implementing journaling programs); Debra A. Morgan et al., *Reflective Journaling: Bridging the Theory-Practice Gap*, EDUCATING NURSES FOR LEADERSHIP 110 (Harriet R. Feldman & Martha J. Greenberg eds., 2005) (discussing the use of reflective journaling by nursing students and the benefits to both the students and instructors in the program to bridge the gap between theory and practice).

110. E.Q. 2.0, *supra* note 46, at 78–79; Amy Reeves, *Emotional Intelligence: Recognizing and Regulating Emotions*, 53 AAOHN JOURNAL 172, 175 (2005).

111. Here is how this requirement was described in our syllabus:

You will be keeping an on-line journal during this class. Your professor will either set up a TWEN page for journals or will ask that you send an e-mail of your journal entry each week. These journal entries can be very short or longer if you

As it turned out, the journaling exercises created more complexity than any other part of the course. Teresa Law, our on-site counselor,¹¹² warned us that if we asked for journal entries, before too long we would be learning things that we may not need to know, as well as things that may require some of our, or the student support office's, attention. Indeed, some Practicum teachers immediately reported excessive sharing on topics unrelated to law school, and some students found it rather creepy to be asked to write on what turned out to be very personal topics.

Since the point of journaling is to help the person writing the journal, some teachers decided to allow the students to write certain things just to themselves, and even for the ones turned in, to ask the teacher not to read certain entries. The same teachers also offered an option where students

prefer. You'll write about your balance activity and then the assigned topic. Journal entries are due at the end of the day each Friday.

See Practicum Syllabus, *supra* note 87, at 2.

For the first journal entry, we allowed students to write about whatever they liked, so we could see how they were doing. One entry read like this:

The first week of law school has been an interesting one, a new experience not quite like any I have ever experienced before. Unlike undergrad, where I switched from one class related to economics, to another related to something like Portuguese, and everything seemed so unconnected, everything so far has seemed very connected and interrelated. This, I have thoroughly enjoyed. However, there is so much new information and I have a feeling of discomfort, not knowing where to store it or compartmentalize it in my head, and even sometimes in my notes. This has been disturbing. I often feel confused and like I am not understanding, however, I think with time, it will all begin to make more sense. I really like the idea of meditation as discussed in *Search inside Yourself* and taking time to balance things out as we discussed in practicum. I hope that the balancing of relaxation, coupled with time to allow the new material to soak in, will allow everything to begin to make more sense soon

Another open-ended entry read as follows:

I raised my hand during a criminal law class and ended up drawing a blank after I was called on. It was really embarrassing and I already have a fear of speaking in large groups. I've been meditating a lot lately for the first time in my life to try and overcome this fear. I think the key is to keep your mind focused and observe your breathing.

112. Teresa Law, LPCC, Clinical Mental Health Counselor at UNM Student Health & Counseling. Education: BA, Sociology/Anthropology, Substance Abuse Studies Program, UNM; MA, Political Science, Western Washington University; MA, Counseling, UNM. This year was Ms. Law's first year at the law school. We were able to add her to our professional staff as a result of the efforts of Dean of Students Bonnie Stepleton. Dean Stepleton responded to a survey from the main campus counseling service about how the office could help our law school. As it turned out, a large physical distance between student health services and the law school made it difficult for our students to seek counseling help. Dean Stepleton was able to negotiate with the main office to get Teresa on the law campus one day a week. The student response to Teresa's presence here has been overwhelming. Teresa's calendar is full most of the time. As a result, there are plans in place to increase Teresa's presence here to two days a week during the 2014-15 school year.

could say “no response,” meaning the teacher would not write back. Other teachers had a policy of just not responding unless asked to. The point of these warnings is that journaling exercises should not be entered into lightly, as the students will do what is asked and the results may create additional obligations for the teacher. At the very least, teachers need to think through their goals in assigning particular journaling assignments, as well as how they will react to troubling entries.

C. Professional Identity: The Oath Project, Exposure to the Profession through Lawyer Panels, and a Public Service Requirement

Many legal educators, not to mention the Carnegie Report,¹¹³ have called for improved course work in law on professional identity.¹¹⁴ The parts

113. WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 135 (2007).

114. See Michael Hunter Schwartz & Jeremiah A. Ho, *Curriculum Reforms at Washburn University School of Law*, in REFORMING LEGAL EDUCATION: LAW SCHOOLS AT THE CROSSROADS 41 (David M. Moss & Debra Moss Curtis eds., 2012). This chapter discusses the task of curriculum reform, specifically looking at the changes made at Washburn University School of Law. The book itself incorporates a look at the inclusion of reflective journaling into the curriculum of the law school. See also Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395 (2012) (discussing the challenge faced by law schools to develop the professional identity of new attorneys, as well as reflection of practice assignments in ethical problems); Suzanne Darrow-Kleinhaus, *Developing Professional Identity through Reflective Practice*, 28 TOURO L. REV. 1443 (2012) (discussing how to integrate the idea of reflective journaling into the current model of law school curriculum and advocating the practical uses of journaling to make students better prepared for the world of legal practice); Lawrence K. Hellman, *Lawyers Should Have a Professional I.D.*, 79 OKLA. B.J. 2791 (2008) (discussing the need for lawyers to develop a professional identity of integrity and ethics, starting with law school and practical “apprenticeships” to develop that identity, and also discussing how law school curriculum can help students develop their professional identities early during law school by offering more practical classes that allow the students to respond to realistic ethics problems); Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57 (2012) (analyzing approaches of advancing professional identity by law school programs and discussing effective models and how they could be incorporated by other schools); Wes R. Porter, *Take an Active Role in Improving Legal Education*, DIGITAL COMMONS: THE LEGAL SCHOLARSHIP REPOSITORY @ GOLDEN GATE UNIVERSITY SCHOOL OF LAW (Oct. 31, 2012), <http://digitalcommons.law.ggu.edu/pubs/520> (discussing ideas for developing professional identity during law school and how law schools must provide opportunities for students to explore their own identities before going out into practice); Jennifer L. Wright, *Seeking the St. Thomas Effect: Law School Mission and the Formation of Professional Identity*, SELECTEDWORKS OF JENNIFER WRIGHT (Feb. 2010), http://works.bepress.com/jennifer_wright/2 (discussing how law schools pride themselves on their ability to train students to think like lawyers, but often miss the opportunity to train students to establish a professional identity).

of our course dealing with professional identity have been included in the Practicum course for some time and are discussed below.

1. The Hugh Muir Oath Project

Students were invited to participate in a voluntary program called the Hugh Muir Oath Project, which is described in the syllabus as follows:

The Hugh Muir Project is an optional Practicum project dedicated to fostering conscious commitment to those values that lead to high standards of lawyering. It seeks to create new standards of ethics in the practice of law through commitments made by law students. The project is dedicated to the memory of UNM Law School Professor Hugh Muir, a tax attorney whose life work was an exemplar of service and dedication to the best in law. It is open only to members of the University of New Mexico School of Law Class of 2016.

You may write statements, which may be expressed as oaths, poems, letters, affirmations, creeds, prayers, ethical codes, promises, contracts or any other statements by which you intend to live as a lawyer. As a general matter, it would be unusual for such a statement to exceed a page in length, and it may be much shorter.¹¹⁵

Some of the following quotes came from oaths produced by my own students. One older student, who had worked very hard in industry and made lots of money doing so, had the following to say in her oath, as part of a longer essay written in the third person:

Her heart grew heavy and each day she drove her luxury SUV to a job she hated, dreading the damage she was about to do to those less fortunate than her, those who lived paycheck-to-paycheck, those who didn't make a six-figure income. Slowly the tide turned and she began to care more about the people than the paycheck. Her guilt grew until it affected her health, her personal relationships, her spirituality and her happiness . . . until eventually her guilt consumed her and she found herself at a crossroads. Finally, the camel's back had broken. I wish I could say she left her job with a "take this job and shove it" flare, but at least she left.

And so here she is . . . once again a middle-class Caucasian, albeit more woman than girl, starting over with a new perspective, a fresh voice and a more humbling mantra.

You can be part of the problem or part of the solution. Pick a side you can live with.

115. See Practicum Syllabus, *supra* note 87, at 6.

Hopefully I've learned many things in my lifetime of running the wrong path. No longer do I tie a paycheck to happiness because happiness is a choice we make ahead of time. No longer will I assist overfed corporations to screw over the rest of us. I'm here to help others and if I can't help them then the least I can do is not hurt them. And for the first time in my life, I'm taking the time to look to my left and to my right. And the view's incredible.

My goal for the second half of my life is to live exactly the opposite of how I've lived the first half. If I make tons of money doing it, great, but if I don't, that's okay too. But this time, I'm going to do it right.¹¹⁶

Another student shared these thoughts in her oath:

Kodoo hozhoo dooleel (From here there shall be a blessing).

As a Navajo woman, I understand every word we say is sacred. As a Navajo lawyer, I will always choose my words carefully. The words I say will be respectful and serve a positive purpose. As a Navajo lawyer, I will represent myself in a positive manner. As a Navajo lawyer, I will always do my best to do the right thing for my client and myself. As a Navajo lawyer, I will work to ensure the Navajo Code Talkers' first message from Guadalcanal endures the years. "May the Navajo Nation endure forever." I will work to safeguard our traditions and people so the Navajo Code Talkers' sacrifice was not in vain.

Si'ah Naaghai Bik'eh Hozho (I shall walk in beauty and live in happiness with all things that exist). Hozho nahasdlii', Hozho nahasdlii', Hozho nahasdlii', Hozho nahasdlii'.¹¹⁷

The Oath exercise culminated in a large-group class in which a particularly articulate state court judge spoke and wove statements made in some of the students' oaths into an inspirational speech about the profession and professionalism.

2. Attorney Panels

Twice during the semester, we arranged to have alumni and other local attorneys come to class and discuss their particular practices and how they stay balanced between work and non-work obligations. Attorney panels can be designed in a number of ways. For the first of these classes this past year, we had three or four attorneys go to each small-group classroom. While we tried to have panelists in each room who were diverse in terms of their years

116. Shared with approval and consent of author Donna Baslee, UNM Law Class of 2016.

117. Shared with approval and consent of author Connie Tsosie, UNM Class of 2016.

of practice and their ethnic backgrounds, we did not necessarily provide diversity of practice. Some teachers felt that we should have because some students did not meet any lawyers in the areas of law that interested them. Also, in years past, the rooms have been arranged by subject matter, with students deciding where to go.¹¹⁸

We also held a second large-group panel session dedicated to access to justice with attorneys that work for public interest or for the poor. We had three lawyers from local non-profits (two of whom started their own non-profits right out of law school) one lawyer who helped people (mostly children who were abused) on a contingency basis, and one who mainly worked in the consumer law area for statutory fees. All discussed the lack of attorneys for the poor despite plenty of lawyers overall in society.¹¹⁹

3. *Public Service Requirement*

Another professional identity component of the class is the six hours of mandatory public service that the course requires, described as follows in our syllabus:

Lawyers work in communities and do volunteer work as part of their professional responsibilities. In this class, you'll begin your professional community service work, by doing six (6) hours of public/community service by the end of the semester. If you do volunteer work during orientation, that time will count toward this requirement. Dean of Students Bonnie Stepleton has posted a list of possible places with contact information on TWEN but if you want to volunteer at some other location that is not on that list, you simply need to get approval from your practicum professor. Dean Stepleton will also arrange some weekend volunteer opportunities during the semester, but you are also free to set up your own. You are not limited to doing volunteer work that is law related. Health Care for the Homeless, food banks, Habitat for Humanity or similar organizations are fine.¹²⁰

The students in our group worked at a legal fair called the Law-La-Palooza, at homeless shelters, and at a food bank, among other places. In the

118. The logistics of this were more than I was able to pull together, but if a staff person could help, this might be best. After the class, the students wrote a journal entry on the experience. The assignment read:

Please write a short journal entry about your reactions to the lawyers you met last week, and the work they do? Where might your own strengths serve you in this or another area of the law? What would you like and not like about this work?

See Practicum Syllabus, *supra* note 87, at 6.

119. Students then wrote about this journal entry: "Write an entry on how you picture yourself assisting with the access to justice problem."

120. See Practicum Syllabus, *supra* note 87, at 2.

last class of the year, we held a small-group discussion of the work they did and their observations of the clients or organizations they encountered, the lawyers some worked with, and themselves. This one class session was one of the best professional experiences I have had in my entire career. The students shared very personal reactions to both lawyers and clients, and shared important parts of themselves.¹²¹ They then completed this journal entry:

When you have completed your public service, please do a journal entry describing what you did, any reflections you have about what you observed, and what you learned. This entry should be no more than 2 to 3 pages in length. Regardless of length, we expect a thoughtful submission.¹²²

Here is a representative entry:

I had the privilege and honor to do something I have never done in my life and that was to volunteer and serve at two places that serve the underserved populations in New Mexico. By giving of my services, I wish to continue volunteering and hope that my family will join me as well. My experience taught me a lot about myself and the selfish life I have lived. My experience opened my eyes to the needs of others.

My first volunteer service was done at the Ronald McDonald House. The Ronald McDonald House is a home away from home for families who have no place to stay while their child is receiving medical care. Families are referred to the Ronald McDonald house through a hospital's social service worker. The house operates as a non-profit and constantly relies on the kind donations from any and all individuals or businesses. The House is staffed by a limited number of employees and volunteers. The House provides all the amenities of a home including a kitchen and washers and driers.

A different student wrote:

The second volunteer activity was at the Law-la-palooza. It was such a humbling and fun experience. The volunteers were able to sit in on consultations with attorneys and listen to real people's issues. I was able to observe a consultation with a family law attorney and a young mother who was trying to see her daughter. The father had taken away the little girl and was avoiding the mother. She hadn't seen her daughter in over two weeks, and despite working two jobs and attending community college, that is all she wanted. After a fifteen minute consultation with the

121. Of course, one needs to be careful how any requirement like this is presented. We have an easier time I suppose because the law school education here is taxpayer-subsidized. We tried to explain that lawyers owe a duty to society and hoped that this sense of duty stayed with them after the class.

122. See Practicum Syllabus, *supra* note 87, at 2.

attorney, in which he clearly laid out what to do to arrange a court ordered visitation schedule, she was the happiest person in the world. It was incredibly humbling and joyful.

Here is another:

I think these events made me see a different side of myself that I never knew existed. From Barrett House, I learned there is hope for a new start. From the event with the American Indian Law Center, I learned there are many Native legal scholars who are continuing to fight the good fight despite overwhelming odds. From the Chinese Cultural Center, I've learned patience and positivity. I feel blessed to have participated in these events. I look forward to more events that not only inspire me to be a better person, but inspire me to do more for the community.

And one more:

I didn't just learn about myself through this experience. I learned that there are a lot of people out there who want to work to make our communities better. When you watch the local news at night you might think our community consists of crime and the weather. The media has a tendency to only show the bad things that happen. I met several motivated people while working at Roadrunner Food Bank who also volunteered their time to help the poor. Most of these people volunteer weekly there and we were referred to as "first timers." It's comforting to be around people who share the same community based goals as I do. These people could not have been friendlier and gave us more tips on how to do the work than the people who actually worked there. Because of this, the atmosphere was upbeat and it contributed to the fact that you were helping a lot of people regardless of how repetitive the tasks were.

It is hard to tell what impact these changes had on students, but we felt confident that we gave them the opportunity to define their own role as a lawyer in society, and also to get a glimpse of the profession they were about to enter.

D. A Few Other Smaller Assignments and Classes to Consider

Here I discuss a few other assignments designed to help students retain their empathy skills, remain positive in attitude, relieve stress, pay attention better, and enhance emotional intelligence skills.

1. *Journaling and Empathy Skills*

As indicated above, we tried to come up with exercises that would help students retain the empathy skills with which they arrived in law school, as well as some sense of personal vulnerability.¹²³ These were the instructions for one empathy journal entry:

You are reading about the lives of many strangers in your cases. Because learning legal analysis, methodology, and vocabulary is so foreign and because there is a lot to learn, your other professors will use most of their limited class time to learn legal rules and identify the particular facts that led to the court's decision.

Here, we invite you to think about a case in a different way. Step into the life of one of the people in a case you've read. Describe what life might be like for this person and how they might be dealing with or feeling about their legal issues and other challenges. What questions might that person have about his or her case or the legal system?¹²⁴

The journal entries we received were uniformly insightful. Responding to a case in which someone was imprisoned for having an unregistered gun

123. Robin Slocum, a Professor of Law at the Fowler School of Law at Chapman University reports:

I teach a course at Chapman designed to foster emotional competency (Psychology of Conflict Resolution), which emphasizes the curricular goals of students developing 1) emotional self-awareness; 2) emotional self-management (including identity of core values and managing their own reactivity); 3) social awareness, including empathy; and 4) relationship management (including practicing assertiveness). Reflecting on our own emotional triggers and being vulnerable enough to share our inner lives with others are key components of emotional competency and managing conflict effectively. Like Anne suggests, I have found that vulnerability and critical self-reflection is best taught by "doing," rather than by theoretical discussions. I have found that trust is a critical component of this course, as students need to trust that what is said within the confines of the group will stay within the confines of the group. And vulnerability begins with me as the teacher, as I model for students what it means to be self-reflective and to take ownership for my own reactivity. I have found that students will go as deep within themselves and with each other as I am willing to go personally. Unlike my negotiations and client counseling classes, we don't engage in mock conflict exercises, but share what is real within our own lives in terms of conflicts with/reactions to others and within ourselves. . . . One of the homework assignments is for students to listen to the Brene Brown TED talks on vulnerability and on shame. This seems to have a big impact on students.

Posting of Robin Slocum, slocum@chapman.edu, to Balance in Legal Education listserv, whose address is: law-legal@lists.fsu.edu<<mailto:law-legal@lists.fsu.edu>> (Jan. 23, 2014) (on file with author).

124. See Practicum Syllabus, *supra* note 87, at 2.

in his own home, this empathy journal was written in the voice of the man in the case:

My world is turned upside down. Why am I locked up behind bars for owning a gun that was for my enjoyment alone? It's not like I was going to go into town and start shooting at people. I live in a rural area where my nearest neighbor is twenty miles away. I like to place cans on my fence and shoot the cans with my AR-14. So what if I didn't register my gun, there are far more dangerous things in my home that I own that I don't have to register like rat poison and my car battery that has acid in it. I was sentenced to ten years in prison, five actually because the rest were suspended. This is not right. There are people out there still committing crimes that are heinous where they actually hurt people and I am in here serving time just because I didn't register my gun. If only we could do the same to politicians who don't accomplish a task they were assigned to carry out. They should be sitting in here with me. This is not fair. I was a productive member of society. . . . Was it my lawyer's fault I sit in here? How will my bill be paid for?¹²⁵

Another student showed self-awareness in acknowledging her own slipping empathy. She wrote:

I have found that it is very easy to distance myself from the cases we read and forget that they are real people and not just made up cases. One that has had a large impact on me was in my criminal law casebook. It was a case involving a Korean refugee and a young African American teenager. The Korean refugee, Ms. Du, owned a liquor store in a bad part of Los Angeles and the store and her family had experienced gang violence and robbery on many occasions. One day as Ms. Du was working, a young African American girl came in to the store. Ms. Du thought she was stealing a carton of orange juice and attempted to confront her. In the confrontation, Ms. Du shot and killed the young girl. The sentencing judge decided to only give Ms. Du probation, and only for a couple of years. While I understand the logic of the sentencing judge, I felt so sympathetic for the young girl and her family. If I were her family, I would not feel like justice was served. They lost a child and Ms. Du wasn't really punished for it. After reading the case, I felt that I never wanted to be a judge because those decisions would be so difficult to make.¹²⁶

One student wrote about a case from my own contracts class, *Lucy v. Zehmer*:¹²⁷

125. Shared with approval and consent of author Christy Chapman, UNM Class of 2016.

126. Shared with approval and consent of author Hannah Bell, UNM Class of 2016.

127. 196 Va. 493, 84 S.E.2d 516 (1954).

I think if you would look into the mind of Mr. Zehmer in the *Lucy v. Zehmer* case you would probably find someone that has lost all trust in our legal system. If you were to take his side of the story, that he had no intent to enter into a contract, it would seem like his life was turned upside-down as a result of a drunken joke. There are a couple things from his point of view that if it were me I'd also be extremely disappointed in our legal system. To start, the case went all the way to the Virginia Supreme Court and, by my count, lasted 2 years in litigation. Second, the associate he supposedly entered into a contract with showed up that night with a bottle of booze (and apparently an expensive one at that) and probably intended on extracting an agreement from him by any means possible (*mens rea* anyone??). Finally, Mr. Lucy profited immensely from selling the timber on the land that he essentially swindled from Mr. Zehmer.

While we read *Lucy v. Zehmer* as an incredibly influential contract case, I think we as lawyers (or lawyers in training) forget about the human side to the law sometimes. It's easy to study rules and holdings in a vacuum, but I think many of us would have a different opinion on the outcome of cases if we were there in the courtroom when it happened or had lived the life of one of the parties after the court ruled against them. If I were Zehmer, I'd wonder if justice and equity were the actual pillars of our legal system.¹²⁸

Another student wrote as follows:

I would like to know more about the woman suing the doctor in my torts class for improperly delivering her baby. A number of my classmates brought this case up as an example of some money hungry lady trying to sue. In the case, the woman didn't have expert witnesses but does assert that her child has cerebral palsy and it doesn't show in her med record. I believe this has to be wrong or there has to be something more to this. A woman knows her child. I mean imagine the damage you could cause your child if you ever claimed something was wrong with them when later they knew there wasn't. A mother is seen either as a conniving bitch to take this to court and make it up or she really knew something was off and she just didn't know how to prove it in court or thought that it would be apparent to everyone. Was she really desperate because she was from a lower socioeconomic class and knew she couldn't help this child, which she wasn't ever supposed to have? This doctor proved he had followed custom based on the average doctor standard, but it bothers me that somehow the woman missed the mark so completely on what she had to prove. There are too many holes that don't make sense!!! Was this just a really awful attorney representing her?? Was there really not a case and the lawyer was just taking her to court to get money? I don't get it,

128. Shared with approval and consent of author Leland Churan, UNM Class of 2016.

and I think I don't get it because there is more to the story, her sensing that there was something wrong with her child since birth that could have been prevented by a better doctor.¹²⁹

Still another chose a statutory rape case that seemed particularly unjust, given that the defendant was mentally disabled, the student had a mentally disabled relative, and the court did not seem to take the disability into account:

The issue that really hit a place to me was the Garnett case dealing with statutory rape of the girl. The man was 20 years old and had a mental disability that resulted in his emotional and educational development being stunted to a point where he was designated to have the emotional age of a child. The discussion ended with the man being held liable for his actions regardless of circumstances, this case being a strict liability violation. Our professor went on to say the mentally disabled do not have much in terms of defense when dealing with the disability. This similar notion was stated in torts liability as well. I guess it stuck with me because I have a mentally handicapped family member and to think their circumstances have little bearing in the court of law kind of took me aback. I'm certainly trying to keep in mind that this is week four and there is great complexity still yet to be seen, but the initial feeling of concern really stuck with me since the discussion.¹³⁰

We spent one small-group class period talking about the students' reactions to this journal assignment and the cases about which they wrote. The class was one of my favorite of the semester. These journal entries were also among the most interesting and compelling entries that we read. They uniformly showed how students were internalizing the law as well as the legal education process. I would unquestionably use this assignment again, but perhaps dedicate more than one small-group class to working through the resulting thoughts and feeling.

2. *Teaching Positive Psychology to Improve Lawyer Satisfaction*

If nothing else, we hoped that the retooled Practicum class could help the students we teach to be happier people. If lawyers are notoriously unhappy, an inexorable truth at this point,¹³¹ the question seems to be whether

129. Shared with approval and consent of author Elizabeth Rietzel, UNM Class of 2016.

130. Shared with approval and consent of author William Townly, UNM Class of 2016.

131. See Daicoff, *supra* note 61, at 1346–47; Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?* 8 J. LEGAL WRITING INST. 229, 229–32 (2002); Peterson & Peterson, *supra* note 61, at 358; Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 872–75 (1999). See also *Law School De-*

they arrived in this condition or whether we somehow led them there. This question has not yet been answered. Professor Todd Peterson's article with his psychology-student daughter entitled *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*,¹³² as well as his own Inns of Court class¹³³ at George Washington University Law School, inspired our own Positive Psychology classes designed to help future lawyers be less pessimistic and fatalistic in their professional and personal lives.

Because the work of Martin Seligman and others shows that lawyers tend to be pessimists but that one can change one's thinking through various exercises and trainings, our reader included an article written by Seligman about attorney unhappiness and depression.¹³⁴ We also asked students to use Seligman's positive psychology web site to assess their own personal strengths.¹³⁵ This was done so students could consider looking for work that capitalized on those strengths. They also completed this journal assignment:

What are a few things that you really cherish in yourself and others?
What are some of your own strengths and weaknesses as shown in the tests at authentichappiness.org?¹³⁶

While students found the tests on authentichappiness.org to be easy to skew and thus somewhat unreliable unless one was completely honest, a fair number of students reported learning from the tests.

We also showed a TED Talk by Shawn Achor,¹³⁷ and I taught one large-group class on positive psychology. Next year, we hope to get someone from outside the law school to teach that large-group class and then provide teachers with follow-up notes to use in the following week's small-group class. That way, this material could be integrated into students' everyday lives. I know at least some students enjoyed the class, but I also doubt that this one isolated session had any permanent effect on their lives.

pression, LAWYERS WITH DEPRESSION, <http://www.lawyerswithdepression.com/law-school-depression/> (last visited Jan. 23, 2014).

132. See Peterson & Peterson, *supra* note 61.

133. This is not to be confused in any way with American Inns of Court, a national professional organization of lawyers created to improve the skills, professionalism, and ethics of the bench and bar. AM. INNS CT., <http://home.innsofcourt.org/> (last visited Jan. 30, 2014).

134. Martin E.P. Seligman, *Why Are Lawyers So Unhappy?*, LAW. WITH DEPRESSION, <http://www.lawyerswithdepression.com/articles/why-are-lawyers-so-unhappy/> (last visited Jan. 30, 2014).

135. AUTHENTIC HAPPINESS, www.authentichappiness.org (last visited July 23, 2014).

136. See Practicum Syllabus, *supra* note 87, at 3.

137. Shawn Achor, *The Happy Secret to Better Work*, TED (May 2011), https://www.ted.com/talks/shawn_achor_the_happy_secret_to_better_work. The talk was suggested by Todd Peterson who also uses it at George Washington University Law School.

3. *Incorporating Mindfulness, Paying Attention, and Stress Reduction*

Our mindfulness-based course work was actually quite limited, since the subject is better addressed in private or one on one. Nevertheless, many of my own students' journals reflected on their meditation practices. In our class, we did one meditation on food that led to a discussion about slowing down. We also talked about mindfulness in informal ways throughout the semester, though not nearly as much as I would have liked. We discussed how mindfulness can expand one's perspective and understanding of one's self.¹³⁸

We are still working on ideas for more fully handling this subject in classes. As described below, we required students to spend one hour on a "balance activity" each week and record it in their journals. Exercise topped the list, along with trips with children, long walks with pets, playing guitar, and video games and TV. Also, one student in the first-year class, a lifetime meditator, offered a meditation class for the 1Ls as one possible balance exercise. Several times during the semester, students wrote about how much they deeply appreciated the meditation class. We also tried to emphasize breathing under stressful circumstances and helping students identify stressors. This was the first journal entry assignment of the course:

Keep a journal for a week or so and note what aspects of your daily life create stress. What sensations do you notice in your mind and body when these stressors hit?¹³⁹

Here is how one student responded:

Pay the bills, dodge the traffic, cook supper, wash the dishes, do the laundry, pick up the kids, take them to the park, and lastly, study . . . am I Cinderella? Some days can feel so overwhelming that I want to go hide out. Having to think about or do the above causes stress, but luckily not on a daily basis. I am learning to adjust to the rigorous routine of balancing family life with the demands of law school. I have noticed though that any of those stressors above start causing me to tense up. My head starts to feel like I took a long slurp of an ice cold milk shake, ouch! The sensation of "brain freeze" sets in. I tell myself not to think too much about all things at once. If I am at school and the work feels overwhelm-

138. KABAT-ZINN, *supra* note 13, at 54–56. As Jon Kabat-Zinn explains, [m]uch of the practice is simply a remembering, a reminding yourself to be fully awake, not lost in waking sleep or enshrouded in the veils of your thinking mind. Intentional practice is crucial to this process because the automatic pilot mode takes over so quickly when we forget to remember.

Id. at 98.

139. *See* Practicum Syllabus, *supra* note 87, at 4.

ing, I take a minute and go walk outside or go talk to a classmate. If I am at home I take a break and go sit outside and enjoy the view of the Sandia Mountains and breathe in the fresh air.

I was starting to get stressed out as to how to take the concepts of each class and organize those concepts in a way that made sense to me. I thank Dean Stepleton for showing me different ways to organize my thoughts.

We also modified the way we addressed alcoholism and depression in the course. Students from prior years reported being told about these risks but not how to keep from falling prey to them. Indeed, in the past, we typically had a recovering alcoholic come in and talk about his life practicing law as an alcoholic, and also provided information about where to go on campus if one were feeling depressed. This year we added a part-time counselor to our law school staff, and we dealt with issues of depression and substance abuse in small groups rather than the large-group class.

From everything we can tell, these improvements in our course seemed to help students. People said they felt supported, and while we don't know how they would have felt otherwise, some expressed the view that the course helped keep stress at bay.

4. Providing Emotional Intelligence Training

Since the first step to emotional intelligence is self-awareness, we primarily used the journaling to try to get students into the habit of paying attention to their own actions and feelings. Here are a few examples of journal entries we requested:

The Only Way Out is Through

We all dislike sharing bad news or otherwise bringing up topics that we know will cause others distress, but sometimes there is only one way to solve a sticky problem and that is to discuss it openly. Think of a situation in which you are dreading bringing something up with someone or a group of people. What is it all about? How long have you been waiting to discuss this? What is stopping you? Be detailed here so you can help yourself address this issue in a positive way. If you are interested, a great book on this topic is "Difficult Conversations" out of the Harvard Negotiation Project.

Teamwork

Write about some or all of the following: What are some of the personal characteristics of people who work well on teams? How do diverse

groups with competing interests work together? How do personal feelings and beliefs influence or get in the way?¹⁴⁰

The Time I Didn't Stop

Describe a time when you knew you were doing something that you knew you should not do and also regretted doing it later. What made you decide to do this thing anyway, even though you knew it was not the best thing to do?¹⁴¹

Communications Trials and Tributes

140. One student journal entry read:

Characteristics of people who work well on teams can vary, but a very important one is the ability to listen to others. During orientation we did an exercise where we listened to a partner and then summarized what they said before we responded to their comment. It was a great exercise and one that I see that good leaders on teams do. Along a similar line, is the ability to keep an open mind. When all members of a team are open minded and receptive towards their teammates, it allows for a more efficient work environment.

Another read:

I think the biggest barrier to effective communication is not knowing the person you're communicating with well enough. I think this is because when we feel uncomfortable around someone we tend to communicate as if we weren't talking to another human being and we tend to not ask clarifying questions when we are unfamiliar with another individual. We are trained to write and speak as if a robot is disseminating our text or speech on the other end. The process is too formal for the average person and they spend more time figuring out what was said rather than coming up with an effective response. While I'll admit there is a time and place for formal speech and writing, most of the time this type of communication is improper. I think the best way to break down the barrier of formality is to get to know the person you are communicating with. Whether it is a work colleague or a fellow student, getting to know someone gives you the knowledge on how to best communicate to that particular person. Also, if there isn't the uneasiness between two people who are unfamiliar with each other, it is much more likely that clarifying questions will be asked so that the communication is more effective.

141. This exercise was taken from SCOTT L. ROGERS & JAN L. JACOBOWITZ, *MINDFULNESS AND PROFESSIONAL RESPONSIBILITY* 61 (2012). At least one Practicum student had a very negative reaction to being asked to write this entry and felt it deeply inappropriate for us to ask. He or she felt that it was far too personal and that if he or she wished to look into something like this, he or she could do so privately or among very close friends or family members. The student urged us to never ask anyone to do anything like this again. This certainly calls into question whether this exercise is just too private or too threatening for a mandatory class. I did use the same exercise in the mandatory clinical class in the summer of 2013, and students seemed to enjoy learning about themselves.

Moreover, the rest of the Practicum students with whom I am familiar seemed to embrace the exercise and at least some got something out of it. Nevertheless, teachers should be careful when assigning these sorts of things, and give students the option to opt out if it feels uncomfortable to them.

Draw to mind a recent conversation you had that you were really dreading, that actually went well, far better than you anticipated. How did you feel prior to the conversation? To what do you attribute this good turn of events? What part did you play that was helpful?

Now draw to mind an interpersonal situation or conversation in which you participated that did not go the way you wish it had gone. Describe that situation and see if you can identify your own role in the situation. Now try to describe a step-by-step way in which you could handle the same situation differently next time, to get a better result.¹⁴²

We also held a large-group class on emotional intelligence in which students were asked to respond to a series of unpleasant communications from colleagues, clients, and opposing counsel. Students had to decide whether to use e-mail, the telephone, or another medium to respond, when to respond, and also how to respond. One such correspondence was an e-mail from opposing counsel asking our student lawyer to rewrite an agreement, but providing very little feedback about how. The e-mail also had a very aggressive tone that would be recognized by more experienced attorneys as a possible problem between opposing counsel and his client, but that would probably just scare the more junior lawyer.¹⁴³ Students were permitted to draft a knee-jerk response to the e-mail and then a more mindful one. We talked about what would best serve our client and also how one could best preserve his or her professional reputation in a small legal community.

Once again, it is hard to say if these exercises had an impact, but it seems as though they did. When I have used similar ones in clinic in the past, students improved their handling of tough situations while they were there with me in clinic. Beyond that, more research is needed in order to see if these exercises have a lasting impact on students.

142. See Practicum Syllabus, *supra* note 87, at 8.

143. The e-mail to which the students were asked to respond, which actually came from a real clinic case, read as follows:

You get this e-mail from opposing counsel who represents the landlord in the deal in which we represent a tenant:

I have read your draft of contract and found it to be completely inconsistent with what we agreed to do in our meeting. No one in their right mind would sign such a thing. Please immediately send an agreement consistent with our conversation.

How will you respond and what will you say? Assuming you'll respond by e-mail, draft it. You can do two alternative responses if you like, one mindful and the other not so much.

5. *Balance Exercises*

Part of the reason for lawyer unhappiness may be working too hard and getting out of balance with life's other obligations. To try to enforce a balanced existence, we required students to spend one hour a week doing something to balance their lives. We added this to our course at the suggestion of one of the Practicum teachers, Professor Marsha Baum. Here is what they were asked to do:

Each week you will be asked to spend at least one hour per week doing an activity that helps you stay balanced as a human being. You will briefly start each journal entry describing this activity and then moving on to any other assigned journal entry topic.¹⁴⁴

In my own group, many people chose to exercise or do yoga, a few meditated, some took their kids on excursions, and still others played video games. While I could be wrong, I got the distinct impression that students appreciated being supported in this way. Through this one course requirement, the ones I spoke with felt that they knew that we cared about their well-being.

IV. CONCLUSION

Legal education is currently under siege, with rising tuitions, criticism about the impractical nature of legal education, and the dearth of legal jobs due to an overall sluggish economy. These conditions make providing a meaningful legal education harder than ever. As a result, some legal educators and administrators may think now is the wrong time to begin teaching mindfulness, professional identity, and emotional intelligence in law school. After all, we must now provide students with even more and even higher-quality content in order to help them survive and thrive in our profession. Topics like mindfulness, professional identity, and emotional intelligence might seem too soft and esoteric, and not a good value for the money students pay to learn from us.

On the other hand, these skills might be exactly what today's lawyer's need. Professional school is designed to give students the tools they need to be successful professionals. Our current mode of teaching strengthens some skills at the expense of others. For example, some of the ways in which we currently teach law may actually weaken students' interpersonal skills, creating a need to either revamp the entire legal education process or at least compensate for these lost or undeveloped interpersonal skills.

144. See Practicum Syllabus, *supra* note 87, at 2.

Our instruction may also exacerbate pessimistic tendencies by teaching students to think of every possible negative consequence and to find fault in others in the adversarial process. Finally, our instruction may exacerbate the very tendency toward interpersonal conflict that we hope some of our students will help resolve in the world. Thus, future lawyers may benefit greatly through broader training that includes mindfulness, professional identity, and emotional intelligence. Indeed, these skills could be as critical to professional success as traditional training designed to teach students how to “think like a lawyer.”