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BEYOND STRESS REDUCTION: MINDFULNESS AS A SKILL FOR DEVELOPING AUTHENTIC PROFESSIONAL IDENTITY

Richard C. Reuben*

I. INTRODUCTION

In Victor Hugo's classic novel *Les Misérables*, Jean Valjean—an ex-con who spent twenty years in a nineteenth century French prison only to find himself hunted again for theft—is presented with an agonizing ethical dilemma: Should he admit to being the former convict or let the person Police Inspector Javert believes to be him go to prison under his name?¹

For the stage version of the novel performed more than a century later, composer Claude-Michel Schönberg captured this existential moment in a song titled “*Who Am I?*,” in which Valjean anguishes:

If I speak, I am condemned
If I stay silent I am damned...
Who am I?

Can I condemn this man to slavery
Pretend I do not see his agony
This innocent who bears my face
Who goes to judgment in my place
Who am I?

Can I conceal myself for evermore
Pretend I'm not the man I was before?
And must my name until I die,
Be no more than an alibi,
Must I lie?

How can I ever face my fellow men
How can I ever face myself again
My soul belongs to God I know,
I made that bargain long ago

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¹ VICTOR HUGO, *LES MISÉRABLES* 23-25 (ISABEL F. HAPGOOD, trans. 2015).

He gave me hope when hope was gone
 He gave me strength to journey on
 Who am I?²

As those familiar with the musical know, Valjean concludes, “I’m Jean Valjean!”

Thankfully, few of us will ever be put to a test quite so dramatic. Yet, every day, law students and lawyers, even judges, find themselves in a crucible that requires them to decide who they are as members of their profession.

Remarkably, as profound and common as this experience is for law students and lawyers, law schools do little to prepare students to answer the fundamental question of “who am I” as a member of this profession. What kinds of clients will I take, and refuse?³ What kind of arguments will I make, and decline to make? How will I treat my colleagues when our interests no longer align?

This is a lost opportunity.⁴ While legal ethics courses can be helpful, they only provide minimal guidance in that they are much more about what lawyers may and may not do as a matter of sanctionable practice—not what they should do in contexts where law practice and personal morals may collide.⁵ These “who am I” moments are left to personal discretion.

But that is no answer, for it only begs the question of how the law student or lawyer is supposed to make *that* decision. For example, many people are raised to believe that it is wrong to lie. Yet, Professor James J. White has famously argued that lying may be necessary in the zealous representation of a client,⁶ and many practicing lawyers are more than willing to lie on behalf of their clients. For them, it’s what a lawyer does, and is justified by the zealous representation canon,⁷ even though they may personally believe lying is wrong.

This disconnection between personal and professional values—or personal and professional identity—may be one of the most significant sources of psychological distress in the legal profession, in part responsible for the high levels of depression and concomitant substance abuse that has long characterized the profession.⁸ To the extent that it is, mindfulness meditation can help bridge this gap.

² Claude Michel Schonberg, *Les Misérables, Who Am I?*, GENIUS, <https://genius.com/Claude-michel-schonberg-who-am-i-lyrics> (last visited July 5, 2020).

³ See Adrienne Jennings Lockie, *Encouraging Reflection on and Involving Students in the Decision to Begin Representation*, 16 CLINICAL L. REV. 357, 358-62 (2010).

⁴ See, e.g., Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 HAMLINE L. REV. 555, 565 (2007). But see Nathalie Martin, *Think Like a (Mindful) Lawyer: Incorporating Mindfulness, Professional Identity, and Emotional Intelligence into the First Year Law Curriculum*, 36 UALR L. REV. 413, 440 (2014); Angela P. Harris, *Towards Lawyering as Peacemaking: A Seminar on Mindfulness, Lawyering, and Professional Identity*, 61 J. LEGAL EDUC. 647, 651 (2012).

⁵ See Thomas G. Bost, *The Lawyer as Truth-Teller: Lessons from Enron*, 32 PEPP. L. REV. 505, 514 (2004).

⁶ James J. White, *Machiavelli and the Bar: Ethical Limits on Lying in Negotiation*, AM. B. FOUND. RES. J. 926, 928-31 (1980); see also Monroe Freedman, *Personal Responsibility in a Professional System*, 27 CATH. U. L. REV. 191, 199 (1978).

⁷ See MODEL RULES OF PROF’L CONDUCT r. 1.3 cmt 1 (AM. BAR ASS’N 1983).

⁸ See generally Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Abuse*

Mindfulness is often touted in the legal field for its capacity to help reduce stress and improve focus through the management of distractions. However, the potential contributions of mindfulness practice for the legal profession extend beyond stress reduction⁹ and include great promise for helping lawyers understand who they are as members of the legal profession – that is, their professional identity. This knowledge is empowering because it allows lawyers facing ethical quandaries to make choices that better align their professional values with their personal values, rather than aligning their personal values with professional values and societal expectations of success.¹⁰ In so doing, mindfulness practice has the capacity to help improve attorney well-being, uplift the level of professionalism throughout the field, and mitigate the need for attorney discipline.

Part II of this article explains why the tension between personal and professional values may be a source of stress and distress for lawyers and law students. Part III describes how mindfulness training can help lawyers overcome this dissonance by better identifying their personal values and can empower them to establish a professional identity that embraces their personal values, as well as those of their profession.

II. THE CHALLENGE OF LAWYER PROFESSIONAL IDENTITY

A. Identity

Identity theory has provided a core understanding for social psychology for nearly a half century.¹¹ It broadly suggests that an individual's beliefs, actions, and experiences can be understood by reference to who they perceive themselves to be—their identity.¹² Part of this self-perception derives from personal traits and experiences, but it is also derived from our dyadic relationships with others as well as our memberships in groups.¹³

Groups are particularly important for purposes of lawyer identity. Group identity can be involuntary, as in race and gender, or voluntary, as in religious, political, or sports team affiliation. To the extent that group membership is voluntary, such as the choice to join the legal profession, social identity research

and Other Mental Health Concerns Among American Attorneys, 10 J. ADDICTION MED. 46 (2016).

⁹ See generally 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, 8 (2002).

¹⁰ See generally, SCOTT L. ROGERS & JAN L. JACOBOWITZ, *MINDFULNESS AND PROFESSIONAL RESPONSIBILITY* (2012)

¹¹ HENRI TAJFEL, *DIFFERENTIATION BETWEEN SOCIAL GROUPS: STUDIES IN THE PSYCHOLOGY OF INTERGROUP RELATIONS* (1978).

¹² Eric H. Erikson, *Growth and Crises of the "Healthy Personality,"* 91-146 in *SYMPOSIUM ON THE HEALTHY PERSONALITY* (M.J.E Senn, ed.,1950)

¹³ See Henri Tajfel & John Turner, *An Integrative Theory of Intergroup Conflict* in *ORGANIZATIONAL IDENTITY: A READER* 33, 33 (1979).

indicates we join groups to enhance our sense of pride and esteem,¹⁴ belonging and attachment,¹⁵ and development of occupational commitment and mastery.¹⁶

1. Professional Identity

As a sub-category of identity theory, professional identity focuses on the degree to which professional orientation shapes one's belief system or values. This literature generally defines a profession as an occupation in which the services provided are: unique; knowledge-based;¹⁷ require formal qualifications and adherence to codes of conduct and standards of community practice; and regulation in part through a distinct culture and values.¹⁸

Researchers have not settled on a single definition of professional identity.¹⁹ Some emphasize foundational elements of identity: beliefs, attitudes, values, motives, and experiences through which one derives personal meaning.²⁰ Others focus more on professional identity as a process of socialization that shapes attitudes toward the foundational elements that create culture.²¹ Integrating both of these theoretical strands suggests professional identity can be understood as a socialization process in which an individual creates a "self-image which permits

¹⁴ VLADIMIR B. SKORIKOV & FRED W. VONDRACEK, OCCUPATIONAL IDENTITY, HANDBOOK OF IDENTITY THEORY AND RESEARCH 693-714 (2011).

¹⁵ See BLAKE E. ASHFORTH & FRED MAEL, SOCIAL IDENTITY THEORY AND THE ORGANIZATION 20-21 (1989); N.G. Brooks, et al., *IT Professional Identity: Needs, Perceptions, and Belonging*, 20 EUROPEAN J. INFO. SYS. 87, 87-102 (2011).

¹⁶ See Esther Canrinus et al., *Self-Efficacy, Job Satisfaction, Motivation and Commitment: Exploring the Relationship Between Indicators of Teachers' Professional Identity*, 27 EUR. J. OF PSYCHOL. EDUC. 115, 117-20 (2012); see also Antii Niemi & Leena Paasivaara, *Meaning Contents of Radiographers' Professional Identity as Illustrated in a Professional Journal – A Discourse Analytical Approach*, 13 RADIOGRAPHY 258, 258-64 (2007).

¹⁷ KEITH MACDONALD, *Professional Work*, in SOCIAL THEORY AT WORK, 356, 357 (Marek Korezynski, Randy Hodson & Paul Edwards eds., 2006).

¹⁸ See Peter J. Denning & Dennis J. Frailey, *The Profession of IT: Who Are We-Now?* COMM. OF THE ACM, June 2011, at 27-29 (2011).

¹⁹ Shoshana R. Dobrow & Monica C. Higgins, *Developmental Networks and Professional Identity: A Longitudinal Study*, 10 CAREER DEV. INT'L 567, 568 (2005); see also Louis Sutherland & Lina Markauskaite, *Examining the Role of Authenticity in Supporting the Development of Professional Identity: An Example from Teacher Education*, 64 HIGHER EDUC. 747, 750-51 (2012).

²⁰ Franziska Trede, Rob Maklin & Donna Bridges, *Professional Identity Development: A Review of the Higher Education Literature*, 27 STUD. HIGHER EDUC. 320, 320-365 (2012); Maree Johnson, Leanne S. Cowin, Ian Wilson & Helen Young, *Professional Identity in Nursing: Contemporary Theoretical Developments and Future Research Challenges*, 59 INT'L. NURSING REV. 562, 563 (2012); SETH J. SCHWARTZ, KOEN LUYCKX & VIVIAN L. VIGNOLES, HANDBOOK OF IDENTITY THEORY AND RESEARCH (2011).

²¹ Herminia Ibarra, *Provisional Selves: Experimenting with Image and Identity in Professional Adaptation*, 44 ADMIN. SCI. Q. 764, 765 (1999); EDGAR H. SCHEIN, CAREER DYNAMICS: MATCHING INDIVIDUAL AND ORGANIZATIONAL NEEDS 244 (1978).

feelings of personal adequacy and satisfaction and autonomy in the interpretation and performance of the expected role.²²

2. Lawyer Professional Identity

Professional identity presents a challenge for the legal academy. Historically, law schools taught students to “think like a lawyer,” primarily through the case method, studying appellate cases to discern legal principles and how they apply to the facts in the case. Legal education shifted significantly in the 1970s when post-Watergate reforms required law schools to teach legal ethics and professional responsibility, as well as other perspectives that contemplated the lawyer’s role in society.²³ Since then, three other developments have furthered the legal profession’s interest in lawyer professional identity.

The first was the American Bar Association’s six-year post-Watergate study of legal ethics, known as the Kutak Report, which led to the enactment of the Model Code of Professional Responsibility in 1983, and also the requirement that law students take a course in legal ethics in order for their law schools to maintain ABA accreditation.²⁴

The second was the MacCrate Report in 1992,²⁵ which sought to bridge the gap between legal education and legal practice by encouraging law schools to emphasize skills and values, including:²⁶

- Provision of competent representation
- Striving to promote justice, fairness, and morality
- Striving to improve the profession
- Professional self-development
- Judgment
- Professionalism
- Civility
- Conservation of the resources

A decade later, the Carnegie Foundation for the Advancement of Teaching picked up the baton of values by calling for law schools to prepare lawyers for the legal profession by cultivating what it called “professional identity.”²⁷ According to the Carnegie Report, professional identity teaches students “the skills and inclinations,

²² RUTH WHITE & CHRISTINE E. EWAN, *CLINICAL TEACHING IN NURSING* (1997).

²³ See, e.g., Ronald D. Rotunda, *Teaching Legal Ethics a Quarter of a Century After Watergate*, 51 HASTINGS L.J. 661, 661 (2000).

²⁴ Laurel A. Rigertas, *Post-Watergate: The Legal Profession and Respect for the Interests of Third Parties*, 16 CHAP. L. REV. 111, 133-34 (2012).

²⁵ Robert MacCrate, *Legal Education and Professional Development-An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, A.B.A. SEC. OF LEGAL EDUC. & ADMISSION (1992).

²⁶ Graham C. Lilly, *Skills, Values and Education: The MacCrate Report Finds a Home in Wisconsin*, 80 MARQ. L. REV. 753, 755 n. 10 (1997).

²⁷ WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 3 (2006).

along with the ethical standards, social roles, and responsibilities, that mark the professional,” and “introduces students to the . . . wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires.”²⁸

Such values represent the nobler side of the profession and posit a professional identity that few would find problematic. However, there is a darker side of professional identity—one that bears much of the responsibility for lawyer distress in law school²⁹ and in practice,³⁰ as well as the maladaptive and often addictive social behaviors that flow from that distress.³¹ That is to say, beneath the noble process of learning to “think like a lawyer” lies the displacement of personal values for professional values that can lead to crippling cognitive dissonance and a desperate search for relief from that psychological pain.

3. Value Displacement in Law School

Research since the 1980s has established the transformative role that law school plays in the process of professional identity formation.³² It is there that students are introduced to the rigorous demands of the profession: heavy workloads and tight deadlines;³³ hierarchical measures of worth, like comparative grading and status-seeking placements;³⁴ teaching practices that are intimidating and isolating; content that is linear or highly abstract and unrelated to the actual practice of law;³⁵ and the suppression of moral reasoning and creativity in favor of mechanical analysis.³⁶ They are also introduced to the rewards for those who can

²⁸ *Id.* at 28.

²⁹ See, e.g., G. Andrew H. Benjamin, et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225 (1986); Matthew Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55 (1999); Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 ST. THOMAS L.J. 225 (2011).

³⁰ See, e.g., Connie J.A. Beck, Bruce D. Sales & G. Andrew H. Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J. L. & HEALTH 1 (1995).

³¹ Krill et al., *supra* note 8, at 51.

³² See, e.g., Benjamin, *supra* note 29, at 226; Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 262 (2004).

³³ David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 CAMPBELL L. REV. 61, 101 (1994). See generally Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879 (1997); Lawrence S. Krieger, *What We're Not Telling Law Students – and Lawyers – That They Really Need to Know: Some Thoughts-in-Acting Toward Revitalizing the Profession from Its Roots*, 13 J. L. & HEALTH 1, 3-4 (1998).

³⁴ Glesner Fines, *supra* note 33; Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM U. L. REV. 1337, 1418 (1997); ROBERT GRANFIELD, *MAKING ELITE LAWYERS* (1992).

³⁵ ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).

³⁶ Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 238 (1991). See also ROBERT V. STOVER & HOWARD S. ERLANGER, *MAKING IT AND BREAKING IT* 43-47 (1989).

thrive in such an environment, or at least be able to endure what some may consider to be a culture of ritualized abuse: money, prestige, status, power, and freedom.³⁷

The result, researchers have found, is a powerful socialization process that reorients students away from intrinsic motivation and toward extrinsic motivation.³⁸ In particular, Professors Lawrence Krieger and Kennon Sheldon have suggested law students enter law school motivated by strong “intrinsic” values—that is, positive personal values that may be based on their religious or spiritual traditions, what they learned in schools and organized group activities and other sources.³⁹ These values include happiness, reputation, perceptions of fairness and honor, personal pleasure and satisfaction, knowledge and understanding, affection and friendship, self-expression, peace and security, and freedom and justice, among many others.⁴⁰ However, the intense pressures and competitive norms at most law schools effectively socialize students toward “extrinsic” values—that is, motivation based on external rewards or punishments, or as a means toward achieving another end, such as law school grades, money and job titles, status and power, fancy consumer goods, and country club memberships.⁴¹

This reorientation from intrinsic value-based motivation to extrinsic reward-based motivation has been found to lead to a loss of self-esteem, life satisfaction, and well-being. As Professor Krieger contends, “depression and unprofessional behavior among law students and lawyers typically proceed from a loss of integrity – a disconnection from intrinsic values and motivations, personal and cultural beliefs, conscience, or other defining parts of their personality and humanity.”⁴²

4. Cognitive Dissonance

This process of value displacement is mind-boggling, perhaps literally in some respects, and warrants a closer understanding. To begin with, while there are similarities, the human mind is not a computer in which programs are simply deleted and others added. Rather, it is more accurate to suggest the value reorientation that occurs in law school relegates intrinsic values from a student’s psychological foreground to the background, while bringing extrinsic values from the background to the foreground. The fact that both sets of values still exist in the

³⁷ William J. Rich, *Balance in Legal Education: Pervasive Principles*, 60 J. LEGAL EDUC. 122, 123-24 (2010).

³⁸ See Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 429 (2005); Kennon M. Sheldon & Tim Kasser, *Goals, Congruence, and Positive Well-Being: New Empirical Support for Humanistic Theories*, 41 J. HUMANISTIC PSYCHOL. 30, 42-45 (2001).

³⁹ See generally, Krieger, *supra* note 38; Sheldon & Kasser, *supra* note 38.

⁴⁰ For a more comprehensive list and discussion, see WILLIAM FRANKENA, *ETHICS* 87-88 (2d ed. 1973).

⁴¹ See *id.*

⁴² Krieger, *supra* note 38, at 426.

heart and mind of the lawyer is precisely what causes the lawyer's cognitive dissonance.⁴³

Cognitive dissonance is the state of mind that occurs when one tries to hold two contradictory ideas, beliefs, or, critically, values in their mind at the same time.⁴⁴ According to the theory, well-supported by more than a half century of empirical research, holding contradictory perceptions at the same time creates psychological distress that the mind seeks to eliminate.⁴⁵ Researchers have found that people use many different approaches to eliminate contradiction, including adding new elements to the cognition to change its overall structure, avoiding the dissonance altogether, and simply choosing arbitrarily which perception to believe.⁴⁶

The implications of cognitive dissonance theory for lawyer professional identity are profound, and can help explain much of the distress and destructive behaviors that plague the profession.⁴⁷ Stated simply, the reorientation of law student motivation away from intrinsic values and toward extrinsic reward-based values creates cognitive dissonance each time the tension between them is triggered in the course of daily life events. The more frequently this dissonance is triggered and the more subjectively fundamental the basis of cognitive dissonance, the greater the magnitude of the dissonance.⁴⁸

All too often lawyers choose unhelpful strategies for resolving this cognitive dissonance, like alcohol and substance abuse.⁴⁹ However, these remedies do not address, and therefore do not resolve, the underlying tension between intrinsic and extrinsic values. The psychological dissonance is still there, and can create collateral problems with clients, partners, family members, and others with whom the stricken lawyer comes into contact. Indeed, alcohol, substance abuse, and other addictive behaviors are the primary reasons for attorney discipline and, ultimately, disbarment – accounting for between forty and sixty percent of all attorney discipline cases, according to the American Bar Association.⁵⁰

Surely, there are more effective coping strategies for resolving this cognitive dissonance. Part III explains why mindfulness meditation may be a more

⁴³ CARRIE YANG COSTELLO, PROFESSIONAL IDENTITY CRISIS: RACE, CLASS, GENDER, AND SUCCESS AT PROFESSIONAL SCHOOLS 24-28 (2005)

⁴⁴ See LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE 12-13 (1957).

⁴⁵ *Id.* at 18.

⁴⁶ COSTELLO, *supra* note 43, at 230-233.

⁴⁷ *Id.* at 117-164.

⁴⁸ See generally Edwin G. Boring, *Cognitive Dissonance: Its Use in Science*, 145 SCI. 680, 684 (1964).

⁴⁹ Krill et al., *supra* note 8, at 52.

⁵⁰ See Linda Himmelstein, *Addiction to Legal Drugs*, LEGAL TIMES, Jan. 15, 1990, at 22; Bonnie Waters, *Substance Abuse Still a Problem in the Legal Profession*, MICH. LAW. WKLY., Apr. 26, 1993, at 22.

effective alternative for resolving this cognitive dissonance in lawyers than substance abuse and other maladaptive behaviors.

III. MINDFULNESS AS AN APPROACH FOR RESOLVING COGNITIVE DISSONANCE IN LAW STUDENTS AND LAWYERS

A. Mindfulness

Mindfulness is a form of meditation that originated in ancient Buddhist practices,⁵¹ but has been modernized for contemporary times and western culture, in part by removing it from its historical religious and spiritual framework. Its primary progenitor is a University of Massachusetts medical professor, Jon Kabat-Zinn, now emeritus, who pioneered what he called Mindfulness Based Stress Reduction, or MBSR.⁵²

This approach to meditation defines mindfulness in terms of “moment-to-moment non-judgmental awareness.”⁵³ Rather than attempting to induce spiritual awakening, mindfulness meditation in the MBSR model prompts practitioners to notice what is happening non-judgmentally, without trying to interpret or do anything about it.⁵⁴ Practitioners use the breath as an object of concentration, and are instructed to simply observe the act of breathing until the mind wanders away with some thought or emotion.⁵⁵ When that happens, they are told to notice that they are distracted, to let go of whatever thought or emotion distracted them, and to bring their attention back to their observation of the breath. This process is repeated over and over again throughout a meditation practice period; in some respects, this *is* the practice of mindfulness meditation.⁵⁶

Mindfulness has joined yoga in moving from the fringes to the mainstream of society at large, and is gaining popularity in the legal profession,⁵⁷ as evidenced in part by the establishment of the Mindfulness in Law Society, a non-profit organization dedicated to promoting the practice in the legal profession.⁵⁸ MBSR research is extensive and authoritatively concludes that mindfulness really can help people cope with stress and improve well-being.⁵⁹ This finding has been replicated

⁵¹ For a comprehensive discussion, see HENEPOLA GUNARATANA, *MINDFULNESS IN PLAIN ENGLISH* 2 (2011).

⁵² JEFF WILSON, *MINDFUL AMERICA: THE MUTUAL TRANSFORMATION OF BUDDHIST MEDITATION AND AMERICAN CULTURE* 35 (2014).

⁵³ Jon Kabat-Zinn, *Mindfulness-Based Interventions in Context: Past, Present, and Future*, 10 *CLINICAL PSYCHOL. SCI. & PRAC.* 144, 145-46 (2003).

⁵⁴ See *id.*

⁵⁵ DEBORAH SCHOEBERLEIN, *MINDFUL TEACHING AND TEACHING MINDFULNESS: A GUIDE FOR ANYONE WHO TEACHES ANYTHING* 13-16 (2009).

⁵⁶ *Id.*

⁵⁷ See, e.g., *Mindfulness Goes Mainstream*, PUBLIC BROADCASTING SYS., <http://www.pbs.org/video/mindfulness-goes-mainstream-jjfwvu/> (last visited Feb. 21, 2018); Asley Ross, *How Meditation Went Mainstream*, TIME (Mar. 9, 2016), <http://time.com/4246928/meditation-history-buddhism/>.

⁵⁸ MINDFULNESS IN LAW SOCIETY, www.mindfulnessinlawsociety.org (last visited Oct. 24, 2020).

⁵⁹ For a compendium of ongoing research since 2005, see generally University of Massachusetts Medical School Center for Mindfulness in Medicine, Health Care, and Society’s “MBSR Research”

across demographic sectors, including the legal community to a lesser extent.⁶⁰ Focusing just on the past decade, MBSR has shown calming effects on cancer patients and their partners,⁶¹ healthcare providers,⁶² working adults,⁶³ primary school teachers,⁶⁴ breast cancer survivors,⁶⁵ aging adults,⁶⁶ parents of children with chronic conditions,⁶⁷ sufferers of generalized anxiety disorder,⁶⁸ and even child abuse survivors.

B. From Stress Reduction to the Emergence of Identity

Stress relief, better focus, and greater happiness are certainly salutary reasons for law students and lawyers to consider trying mindfulness, as the National Task Force on Lawyer Well-Being advised in 2017.⁶⁹ However, our understanding of its potential can transcend stress relief to the underlying issues of professional identity that may often lie at the core of this stress.

1. Cutting Through Cognitive Dissonance

As we have seen, one source of law student and lawyer stress is the cognitive dissonance between the intrinsic personal values that students bring to the profession and the extrinsic, reward-based professional values they acquire in law school, which are reinforced in practice. Mindfulness meditation can be an effective tool to reduce this dissonance, and to pave the way for a more authentic

web page. UMASS MEMORIAL HEALTH CARE, <http://www.umassmed.edu/cfm/research/mbsr-research/> (last visited May 30, 2017).

⁶⁰ See Richard C. Reuben & Kennon M. Sheldon, *Can Mindfulness Help Law Students with Stress, Focus, and Well-Being: An Empirical Study of 1Ls at a Midwestern Law School*, 48 SW. L. REV. 241, 242-43 (2019).

⁶¹ Kathryn Birnie et al., *Exploring Self-Compassion and Empathy in the Context of Mindfulness-Based Stress Reduction (MBSR)*, 26 STRESS & HEALTH 359 (2010).

⁶² Andres Martin-Asuero & Gloria Garcia-Banda, *The Mindfulness-Based Stress Reduction Program (MBSR) Reduces Stress-Related Psychological Distress in Healthcare Professionals*, 13 SPAN. J. PSYCHOL. 897, 899-900 (2010).

⁶³ Maryanna D. Klatt et al., *Effects of Low-Dose Mindfulness-Based Stress Reduction (MBSR-Id) on Working Adults*, 36 HEALTH EDUC. & BEHAV. 601, 603, 607 (2009).

⁶⁴ E. Gold et al., *Mindfulness-Based Stress Reduction (MBSR) for Primary Schoolteachers*, 19 J. CHILD & FAM. STUD. 184, 185, 187 (2010).

⁶⁵ Cecile A. Lengacher et al., *Randomized Control for Mindfulness Based Stress Reduction (MBSR) for Survivors of Breast Cancer*, 18 PSYCHOONCOLOGY 1261, 1266-67 (2009).

⁶⁶ Laura A. Young & Michael J. Baime, *Mindfulness-Based Stress Reduction: Effect on Emotional Distress in Older Adults*, 15 COMPLEMENTARY HEALTH. PRAC. REV. 59, 62 (2010).

⁶⁷ Holly G. Minor et al., *Evaluation of a Mindfulness-Based Stress Reduction (MBSR) Program for Caregivers of Children with Chronic Conditions*, 42 SOC. WORK HEALTH CARE 91, 95, 103-105 (2006).

⁶⁸ Lobsang Rappay et al., *New Strategies for Combining Mindfulness with Integrative Cognitive Behavioral Therapy for the Treatment of Generalized Anxiety Disorder*, 29 J. RAT. EMO. & COG. BEHAV. THER. 92, 101, 116 (2011).

⁶⁹ See generally CREATING A MOVEMENT TO IMPROVE WELL-BEING IN THE LEGAL PROFESSION, NATIONAL TASK FORCE ON LAWYER WELL-BEING: REPORT AND RECOMMENDATIONS, Appendix B, 8.4 (August 2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf> (last accessed July 9, 2020).

professional identity. To fully appreciate why requires us to go beyond objective descriptions of the practice to an understanding of the subjective experience of the practice itself.

As noted previously, mindfulness is a practice in which one establishes an object of concentration, such as the breath, and uses that as a baseline for being aware of whether one is concentrated or distracted. One is concentrated if they are able to maintain focus on the object of concentration, and one is distracted if their mind wanders to other topics.

Contrary to popular belief, being distracted is not a problem. Rather, it is an opportunity to learn more deeply about oneself by understanding the nature of the distraction, as well as its personal meaning. Thoughts and emotions inevitably arise during the course of a mindfulness meditation session. Sometimes these thoughts and emotions are easy to let go of, like the need to do the laundry or yesterday's dinner with a significant other. Other thoughts can be much stickier, however, and can keep coming back despite our best efforts to let them go, such as a serious problem at work or with a significant relationship.

2. Sticky Thoughts, Like Identity

Identity theory suggests that thoughts and emotions that bear on identity are likely to be especially sticky during mindfulness meditation because they go to our basic sense of self-worth. In law, professional identity can be particularly tricky because of the cognitive dissonance regarding identity previously described. Imagine, for example, a law review student being sexually harassed by a fellow student or teacher; a big firm lawyer whose billable hours requirement keeps him away from his young family; or, a judge presiding over the trial of a repulsive criminal defendant. Each of these familiar situations can be understood at the surface. But they can also trigger deeper issues. The law student may be concerned about the implications of her actions for her legal career. The big firm lawyer may feel guilty for sacrificing his family for his career. The judge may feel frustration, even anger, at legal rules that constrain his decision-making.

In each situation, the legal professional experiences the tension, or cognitive dissonance, between intrinsic personal and extrinsic professional values acutely. If these legal professionals practice mindfulness meditation and use the breath as their object of concentration, this dissonance would almost certainly manifest as distracting thoughts and emotions that would take their minds away from their breath. Unlike more mundane thoughts, like the laundry and where to go for dinner, these thoughts would likely be difficult to release because they are about identity – who we are – as both individuals and as professionals.

To be sure, some mindful lawyers may have powerful enough concentration to do so, and that can happen after many hours of mindfulness practice.⁷⁰ However, most of us do not. More likely, the lawyer may be able to let these thoughts go, only for them to return with the next breath or two. For this

⁷⁰ MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* 35-66 (2008).

lawyer, the gift of the mindfulness practice is the recognition of the struggle, and the opportunity to use it to foster deeper understanding.

It is also possible that the lawyer will not be able to let these thoughts go at all. For this lawyer, the mindfulness practice instruction is simply to sit with it, but in a very unique way: by mindfully observing all that there is to be seen during the presence of these powerful thoughts and emotions—mentally, physically, and emotionally—as a matter of inquiry and understanding.⁷¹

So, too, for a law student. For example, imagine trying to meditate shortly after finding out that you received a bad grade in a class that was important to you. Without mindfulness, we might just ruminate self-critically about the grade, with thoughts like: “I am stupid. I will never pass the bar. I will never get a job. I am an embarrassment to myself and my family. I am a failure.” Too often, we believe those thoughts are inherently true just because we thought them. In the Buddhist tradition, this is called “suffering.”⁷²

With mindfulness, however, we can observe thoughts with the distance necessary to see that these thoughts are just thoughts, not inherent truths. This allows these thoughts to function as teachers, rather than judges, revealing what is important to us, and reminding us to be compassionate for ourselves and others, who just might have similar thoughts.⁷³

3. The Dark Night of the Soul

This is deep, transformative work—the proverbial dark night of the soul.⁷⁴ It is also a very hard place to be because mindfulness practice compels us to observe whatever comes up with fierce honesty and without imposing value judgments. On issues of identity, it requires us to look at who we really are, for better and for worse. It also asks us to observe this with the detachment of a scientist and the magnificent balance of an Olympic gymnast – able to take in the good and the bad, without succumbing to either.

The process is one of active inquiry and understanding, rather than merely wallowing in self-pity. We can literally see, clearly and directly, the struggle between our intrinsic values and the extrinsic values imposed by our profession. We can observe every detail of that struggle with deep personal candor, and hopefully feel some compassion for ourselves as mere mortals trying to do the best we can. It is through this crucible that mindfulness practice can help reveal and

⁷¹ JOSEPH GOLDSTEIN, *THE EXPERIENCE OF INSIGHT* 63-68 (1987).

⁷² JOSEPH GOLDSTEIN & JACK KORNFIELD, *SEEKING THE HEART OF WISDOM* 99-108 (1987).

⁷³ *Id.*

⁷⁴ See generally ST. JOHN OF THE CROSS, *DARK NIGHT OF THE SOUL* 4-10 (E. Allison Peers ed., 3d ed. 1994), <http://www.carmelitemonks.org/Vocation/DarkNight-StJohnoftheCross.pdf>. For a discussion by a mindfulness teacher, see Eckhart Tolle, *Eckhart on the Dark Night of the Soul*, ECKHART TEACHINGS, <https://www.eckhartolle.com/eckhart-on-the-dark-night-of-the-soul/> (last visited July 5, 2020).

support authentic professional identity in a way that mere reflection or contemplation does not.

When we think about problems like these three examples, we give them our focused attention until we have the matter resolved. We want to do that, and it can be very helpful to do so. However, it will necessarily be limited by the frame we choose to define the issue.⁷⁵ For example, the law student who was subject to sexual harassment may have given a lot of thought to what to do about the harassment, and that may have led to several possible strategies for proceeding, such as filing a complaint with the dean or university Title IX office, talking to the perpetrator and securing an apology, or perhaps just doing nothing. All of these options assume a narrow definition of the problem as one of sexual harassment, rather than attending to the underlying interests that may be of deeper concern, like her future, reputation, or view about herself.

Mindfulness is just the opposite. Rather than trying to stay focused on a single topic, we try to let it go. Rather than defining the matter for resolution—what to do about the harassment, the work-life balance, the legal rules—the matter defines and redefines itself each time we let it go and it reemerges. Our understanding of a topic deepens through this process of inquiry and observation. In so doing, the practice reveals what is really important to us because we learn more about ourselves and why the “sticky thoughts” are so important. The thoughts will continue returning until we have resolved them at a level of depth that is commensurate with the amount of dissonance being experienced.

Thus, when the sexually harassed law student finally sees that the dissonance she was experiencing was because of the tension between her personal sense of dignity and her professional ambition, she can finally choose how to resolve that underlying tension. So, too, shall the overworked big firm lawyer, who will be able to see his stress is a function of the competing demands of work and home, and the judge, who will realize that the agony she is feeling in making a decision is because of the tension between her personal morals and her duty to her profession. This clarity allows for the emergence of authentic professional identity.

C. The Emergence of Authentic Professional Identity

Consider once again the sexually harassed law student to understand how mindfulness practice can foster authentic professional identity. As she sits down for her mindfulness practice, she may fully intend to simply practice being present and not think about the incident. But if thoughts about the incident keep arising for her as she practices, she has little choice but to embrace them and learn from them.

In so doing, she learns more about what is subjectively important to her about the incident each time thoughts of it emerge. For example, early in her meditation session, her understanding of the incident and why it is on her mind

⁷⁵ For extensive treatments of problem definition, see generally Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Guide for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, (1996); see also Leonard L. Riskin, *Decisionmaking in Mediation: The New Old Grid and the New New Grid*, 79 NOTRE DAME L. REV. 1, 51 (2003)

may be simply deciding what to do about it in order to move past it. But as the issue continues to arise, returning every time she tries to let it go and relax, she may come to learn that there is more to the event than merely "getting over it."

For example, she may see that the reason thoughts of the harassment keep coming back is not just because she needs to decide what to do, but also because of the sense of violation, humiliation, disruption, and other emotions that the incident caused, and will continue to cause as she grapples with it. She may experience these sensations in the present moment with tightness in her physical body (perhaps hunched shoulders), thoughts about what she is going to do (report it, don't report it), and perhaps other emotions, such as anger, frustration, sadness, or even shame.

As she continues to meditate and observe her thoughts ebb and flow, and as those thoughts continue to revolve around the incident, she may come to realize that what is really bothering her is that the incident is forcing her to do something she has always been afraid to do – stand up for herself, or, deeper yet, to believe that she is worthy of defending.

This is the moment where knowledge is power. To the extent that the thoughts arising for the student are about her identity, rather than just the incident, and that she has witnessed the contrast between the subjective intrinsic values of her personal identity and the more objective extrinsic values of her professional interests, she has finally arrived at the crux of her cognitive dissonance: the tension between following the extrinsic path of reward and choosing to do nothing so as not to make waves and jeopardize her future and her personal intrinsic values of justice and self-worth. She will still have to decide what she wants to do about the harassment, but she now has the power to make that choice based on her integrated understanding of both her intrinsic and extrinsic motivations, instead of one simply having priority over the other. As such, the choice she makes will be a much deeper reflection of who she is as a person and as a lawyer, and the professional identity that emerges will be much more authentic.

Her choice will also be more durable. That is critical, for it is one thing to come to an understanding in the calm of a meditation session, but quite another to implement that decision in real life. There are consequences to all choices, and when those choices are made at the level of identity, we are often choosing between options that may have adverse external consequences.

Depending upon how she decides to act upon the harassment, standing up for herself may mean a period of unpopularity for her that could bear professional costs, such as the opportunity for a leadership position on Law Review next year or friendships that could be helpful in practice. But she may be willing to accept those consequences in light of the intrinsic values she honors by standing up for herself, such as justice and self-worth. This is her authentic professional identity,

and taking actions that honor this fundamental identity will provide a foundation for the student's happiness in law for years to come.

IV. CONCLUSION

Much of the discussion and research about mindfulness in law has focused on stress reduction. However, the penetrative potential of mindfulness extends beyond stress relief to empowering the lawyer to identify and respond to the underlying causes of stress. Mindfulness helps identify when the source of this tension is the cognitive dissonance caused by disjunction between personal intrinsic values and extrinsic professional values. It also helps bridge this gap by giving us a fuller and clearer understanding of the contours of its terrain as we explore the present experience of that dissonance on our mind, body, and heart. In turn, this depth of understanding helps the practitioner make choices that resolve cognitive dissonance by allowing for deeper integration of personal intrinsic and professional extrinsic values, rather than merely prioritizing professional values over personal ones, thus allowing for the emergence of a more authentic professional identity that is both well-founded and durable over time.

Researchers have finally commenced empirical research on the potential benefits of mindfulness for the legal profession. This research has tracked the broader mindfulness empirical literature by centering on stress, focus, and well-being. However, cognitive dissonance theory and its application to lawyers suggests mindfulness may also have the capacity to empower lawyers to identify and resolve the tension between their personal intrinsic values and the extrinsic reward-based values of their profession in a way that allows for the emergence of their authentic professional identity. One hopes that this kind of research will begin as soon as possible. The persistent cycle of depression, maladaptive coping, and destructive consequences for lawyers, clients, and society suggest there is no time to lose.

