

CONTEXTUALIZING MINDFULNESS: FOUNDATIONS, PRACTICE GUIDANCE, AND CULTURAL IMPLICATIONS

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It's been nearly thirty years since I attended my first mindfulness meditation retreats in the forest monasteries of India and Thailand. I stumbled upon mindfulness without really knowing what I was getting into, and immediately found the practice illuminating and ultimately life-changing. Because I continued practicing mindfulness through many years of retreats, studying and practicing with teachers and leaders in the field, and then becoming a teacher myself, I have had a unique vantage point to observe the mindfulness movement up close. I have watched it grow from a practice taught primarily within Asian Buddhist monasteries, into a worldwide phenomenon.

Mindfulness is currently, at least in the United States, being adapted and incorporated into so many sectors of society, from education to healthcare, from business to psychology, and as relevant here, to the field of law. It is accessed online through courses and apps, of which there are countless at this point. Once the purview of monastics, now you hear about CEOs, school children, veterans, physicians, and my goodness, lawyers meditating!

How might mindfulness benefit law school education and lawyers themselves? The answers are in this excellent array of articles from a diverse variety of educators and professionals. My intention here is to give the reader some context. What is mindfulness? Why is it beneficial? What is happening in the culture at large?

I like to define mindfulness as paying attention to present moment experiences with openness, curiosity, and a willingness to be with what is.

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Most people typically find themselves lost in the past or the future. If you were to check into your mind at any point in the day, you'd find yourself replaying the past—ruminating or wishing you had done things differently; or obsessing about the future—planning or imagining the worst-case scenario. When our minds travel to the past or the future, we tend to find ourselves lost in regret or anxiety. Anxiety and depression rates in the US are at an all-time high, with anxiety affecting 40 million adults.¹ Mindfulness is extremely helpful for working with ruminations and returning our attention to the present moment.

Mindfulness also helps us to engage with life more fully. Most of us experience life on a kind of automatic pilot. We are all so busy with our responsibilities and daily life struggles. The end of the day comes, and life seems to have passed us by. How many times have we gotten in the car and out again and have no idea what happened in between? Mindfulness is an invitation to inhabit our lives more fully—to not miss our lives.

Mindfulness counteracts these tendencies: ruminations and automaticity. Those who practice mindfulness report more ability to work with challenging states of mind and difficult emotions. With mindfulness practice, they also report increased positive states of altruism, kindness for themselves and others, gratitude, and appreciation of life.

Mindfulness is typically developed in meditation, although it is a quality of attention that can also be practiced at any moment in daily life. Those who wish to learn mindfulness are encouraged to meditate daily, where they focus on their breathing for fifteen minutes or so—although I would start a beginner off with just five minutes a day. Everyone has time for five minutes. I don't care if you have ten thousand children; you have time for five minutes.

To meditate, beginning instructions encourage the students to focus on the feel of their breathing in their body—the rising and falling, expanding and contracting of their abdomen or chest, or the tingling sensation as the air moves through their nose. When thoughts distract them, they notice their mind has wandered and they redirect their attention back to their breathing. Initially meditation is challenging to do, but over time and with practice, people find it gets easier. Their concentration grows, and they report states of peace and well-being. They also learn to use mindfulness to work with difficult thoughts and emotions when they arise in meditation, and ultimately in life.

Once students have some basic training in mindfulness, they find they are able to bring it into daily life. They remember to be mindful when they

1. ANXIETY AND DEPRESSION ASS'N OF AM., ABOUT ADAA, <https://adaa.org/about-adaa/press-room/facts-statistics> (last visited Mar. 14, 2019).

get anxious in the course of the day, or they take a mindful pause before they send a charged email. Or they remember to stop and appreciate the beauty of nature, or their children, or listen fully to a friend who needs their support.

When I speculate about the question—why did mindfulness get so popular? I think the answer is, because it works. Many people have embraced mindfulness because they have personally found relief from the maelstrom of emotions, from their exhausting stress responses, and have been moved by their growing self-awareness and the ensuing qualities of kindness and compassion. Is it for everyone? No, of course not. Just like any “medicine”, it works for some and not for others. I never have once assumed that *everyone* should be practicing mindfulness.

For those for whom it does “work”, the question is why is it so helpful? Clearly it reduces stress, and significantly, mindfulness teaches us to not take our thoughts so personally. We learn to identify rumination patterns and come back into the present moment when we find ourselves lost in unhelpful thought patterns. I often tell my students that thoughts are like trains, we get on a train and find ourselves twenty minutes down the track (*I didn’t complete my reading for class . . . what if I get a terrible grade? What if they kick me out of school . . . my parents will be so disappointed . . . and so on*). With mindfulness we can see that we’ve gotten on this particular train and the self-awareness can allow us to get off the train. Or not even get on the train in the first place.

Scientific research backs up the benefits of mindfulness that many people have personally experienced. The growth of scientific studies on mindfulness has also contributed to its growing popularity.² It’s easy to get excited about the science but I do want to point out that the field is still quite young, with only about four thousand published studies as of this writing. That may sound like a lot, except that if you were to do a search on PubMed, the online medical-journal database of citations and abstracts (maintained by the National Center for Biotechnology Information in the United States), for studies showing that exercise is helpful for people with heart disease, you would find more than sixty thousand studies. Also, many of the mindfulness studies have not been replicated, use small sample sizes, and don’t have

2. See James W. Carson et al., *Mindfulness-Based Relationship Enhancement*, 35 BEHAVIOR THERAPY 471 (2004); Sara W. Lazar et al., *Meditation Experience is Associated With Increased Cortical Thickness*, 16(17) NEUROREPORT 1893 (2005); Alvin Powell, *When Science Meets Mindfulness*, HARV. GAZETTE (APR. 9, 2018), <https://news.harvard.edu/gazette/story/2018/04/harvard-researchers-study-how-mindfulness-may-change-the-brain-in-depressed-patients/>.

adequate control groups.³ In spite of all these limitations, the science of mindfulness has been promising, and the field is growing.⁴

Mindfulness has been shown to improve health outcomes for stress-related conditions, reduce pain symptoms, improve emotional regulation, help with anxiety and depression, reduce addictive behavior, increase the ability to pay attention, and cultivate states of well-being.⁵ The neuroscience research even shows structural brain changes in long-term meditators.⁶

The mindfulness research is particularly robust in showing that mindfulness can be helpful with anxiety and depression and this may be compelling to law school students or lawyers themselves where the incidence of anxiety and depression is so significant. A 2016 study of nearly 13,000 lawyers assessed levels of baseline depression, anxiety, and stress among attorneys at 28%, 19%, and 23%, respectively.⁷

Because mindfulness is shown scientifically and many attest personally to its effectiveness, it is being incorporated into most sectors of society. In the US, the mindfulness phenomenon tends to be more West and East coast centric.⁸ And despite what for me (in California) feels like “everyone” is practicing mindfulness, 2016 statistics show that in the year prior, it is a mere 1.9% of adults who practice mindfulness in the United States.⁹

Originally brought into a medical setting with the work of Jon Kabat-Zinn at the University of Massachusetts, in the late 1970s¹⁰ mindfulness was shown to be helpful for chronic pain patients, both reducing pain symptoms and improving quality of life.¹¹ Since then it’s been integrated into health care in countless innovative ways. Mindfulness programs such as

3. Yi-Yuan Tang, *The Neuroscience of Mindfulness Meditation*, 16 NAT. REV. NEUROSCI. 213 (2015).

4. Tanya Basu, *Mindfulness is Going Mainstream Because of Science*, DAILY BEAST (Mar. 3, 2018, 9:13 PM), <https://www.thedailybeast.com/mindfulness-is-going-mainstream-because-of-science>.

5. Alice G. Walton, *7 Ways Meditation Can Actually Change the Brain*, FORBES (Feb. 9, 2015, 10:03 AM), <https://www.forbes.com/sites/alicegwalton/2015/02/09/7-ways-meditation-can-actually-change-the-brain/#66fce1b171465>.

6. See Tang, *supra* note 3.

7. Patrick R Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).

8. At least in the author’s experience, mindfulness tends to be most popular on the East and West coasts.

9. Holger Cramer, *Prevalence, Patterns, and predictors of meditation use among US adults: A Nationally Representative Survey*, SCI. REP., Nov. 2016 at 3, <https://www.nature.com/articles/srep36760>.

10. GUIDED MINDFULNESS MEDIATION PRACTICES WITH JON KABAT-ZINN, ABOUT THE AUTHOR, <https://www.mindfulnesscds.com/pages/about-the-author> (last visited Mar. 14, 2019).

11. John Hau Tran, *Literature Review: Effectiveness of Mindfulness Based Stress Reduction on Chronic Pain*, ST. JAMES MED. SCH. (2017), <https://perma.cc/X65W-EDKQ>.

Mindfulness Based Stress Reduction (MBSR) are being taught in hospitals and clinics across the country, professionals “prescribe” it as a complementary approach to healing, and it has been taught within medical school curriculum.¹² It has also been significantly adapted and utilized in the psychology field, creating many new interventions for mental health such as Mindfulness Based Cognitive Therapy (MBCT) or Acceptance and Commitment Therapy (ACT) for depression and anxiety.¹³ A generation of mental health professionals is being trained in, at the minimum, the basics of mindfulness.

Businesses have brought in mindfulness to address employee burnout¹⁴ and increase productivity¹⁵ (although this is considered controversial to some in the mindfulness field¹⁶). Some businesses have implemented mindfulness courses for their employees, often worldwide.¹⁷ Coaches are bringing mindfulness in to work with business clients. Mindfulness is being implemented at Fortune 500 companies, in Silicon Valley, and small businesses on a grassroots level.¹⁸

12. MINDFUL LIVING PROGRAMS, WHAT IS MINDFULNESS-BASED STRESS REDUCTION? (2016), http://www.mindfullivingprograms.com/mbsr_background.php (last visited Mar. 14, 2019).

13. John D. Teasdale et al., *Prevention of Relapse/Recurrence in Major Depression by Mindfulness-Based Cognitive Therapy*, 68 J. CONSULTING & CLINICAL PSYCHOL. 615 (2000).

14. For a study claiming that mindfulness helps with burnout and work-related anxiety, see Zubin R. Mulla et al, *Mindfulness-Based Stress Reduction for Executives: Results from a Field Experiment*, BUS. PERSPECTIVES RES. (2017), <http://journals.sagepub.com/doi/10.1177/2278533717692906>.

15. See, e.g., Matt Tenney, *4 Ways Mindfulness Improves Your Productivity*, HUFFPOST (Apr. 20, 2016, 6:33 PM), https://www.huffingtonpost.com/matt-tenney/4-ways-mindfulness-improv_b_9738720.html.

16. See William Little, *Mindfulness Courses at Work? This Should Have Us All in a Rage*, GUARDIAN, (Jan. 31, 2018, 2:00 AM), <https://www.theguardian.com/commentisfree/2018/jan/31/mindfulness-work-employers-meditation> (arguing that mindfulness makes employees more accepting of stressful working conditions); Kathleen D. Vohs & Andrew C. Hafenbrack, *Hey Boss, You Don't Want Your Employees to Meditate*, NY TIMES (June 14, 2018), <https://www.nytimes.com/2018/06/14/opinion/sunday/meditation-productivity-work-mindfulness.html> (suggesting that mindfulness undermines productivity since it leads to acceptance and discourages people from wanting to work harder).

17. See Daniel Goleman, *Here's What Mindfulness Is (and Isn't) Good For*, HARV. BUS. REV. (Sept. 28, 2017), <https://hbr.org/2017/09/heres-what-mindfulness-is-and-isnt-good-for> (claiming that although there is too much hype around mindfulness, it does have some clear benefits in the business setting by promoting an increased ability to focus, more capacity to stay calm under pressure, better short-term memory, and an attitude more conducive to being a good corporate citizen); Kimberly Schaufenbuel, *Why Google, Target and General Mills are Investing in Mindfulness*, HARV. BUS. REV. (Dec. 28, 2015), <https://hbr.org/2015/12/why-google-target-and-general-mills-are-investing-in-mindfulness>.

18. See, e.g., Henry Stewart, *Five Big Companies Who Swear by Mindfulness*, LINKEDIN (Aug. 17, 2015), <https://www.linkedin.com/pulse/five-big-companies-who-swear-mindfulness-henry-stewart>.

Sports teams like the Los Angeles Lakers and Chicago Bulls have brought in mindfulness experts.¹⁹ It's being used to help veterans with PTSD,²⁰ and in the military²¹ and correctional facilities,²² and with law enforcement officers to help reduce reactivity and promote compassion.²³

I have watched over the years as entire K-12 school systems have embraced mindfulness. I have observed creative grassroots innovations from countless schoolteachers who have developed their own practices and carried it in creative ways into their classrooms. It has been brought into higher education with both for credit courses and part of general wellness and resiliency mandates at a variety of public and private universities.²⁴

My center at UCLA at the Semel Institute for Neuroscience in the David Geffen School of Medicine has brought mindfulness into the health system and for a decade has been offering mindfulness classes to both to UCLA campus and the general public.²⁵ We have pioneered a mindfulness teacher's training program, and offer online meditations and programs. We also have run a number of research studies looking at mindfulness for insomnia, in breast cancer survivorship, and with Alzheimer caregivers.

19. See, e.g., Lisa Capretto, *Phil Jackson on Using Meditation and Mindfulness to Create Great Basketball Teams*, HUFFPOST (July 17, 2013), https://www.huffingtonpost.com/2013/07/17/phil-jackson-meditation-coaching-tactics_n_3606632.html; Ohm Youngmisuk, *Luke Walton Puts Focus on Meditation and Lakers Try to Fix NBA-Worst FT Percentage*, ESPN (Jan. 21, 2018), http://www.espn.com/nba/story/_id/22162522/los-angeles-lakers-hoping-meditation-solve-free-throw-shooting-woes;

20. U.S. DEPT. VETERAN AFF., MINDFULNESS PRACTICE IN THE TREATMENT OF TRAUMATIC STRESS, https://www.ptsd.va.gov/gethelp/mindfulness_tx.asp (last updated Dec. 18, 2018).

21. See Shannon Russ, *Mindfulness-Based Stress Reduction Finds Place in the Military*, U.S. ARMY (July 7, 2015), https://www.army.mil/article/151787/mindfulness_based_stress_reduction_finds_a_place_in_the_military.

22. See Thomas Lyons & Wm. Dustin Cantrell, *Prison Meditation Movements and Mass Incarceration*, 60 INT'L J. OFFENDER THERAPY & COMP. CRIM. 1363 (2017); Doug Carnine, *Spreading Mindfulness, Kindness, and Resilience in Prison*, GARRISON INST. (Mar. 13, 2018), <https://www.garrisoninstitute.org/blog/spreading-mindfulness-prison/>; PRISON MINDFULNESS INST., <https://www.prisonmindfulness.org> (last visited Mar. 14, 2019).

23. Jill Suttie, *How Mindfulness is Changing Law Enforcement*, GREATER GOOD MAG. (May 18, 2016), https://greatergood.berkeley.edu/article/item/how_mindfulness_is_changing_law_enforcement. For a variety of resources discussing how mindfulness helps law enforcement fight stress and develop resilience, see John H. Kim, *Mindfulness: The Next Frontier of Battling Officer Stress*, DISPATCH, December 2017, https://cops.usdoj.gov/dispatch/12-2017/Mindfulness_Next_Frontier_of_Battling_Officer_Stress.html.

24. See, e.g., Julianne Cheek et al., *Creating Novel School-Based Education Programs to Cultivate Mindfulness in Youth: What the Letters Told Us*, 26 J. CHILD & FAM. STUD. 2564 (2017); Kimberly A. Schonert-Reichl et al., *Enhancing Cognitive and Social-Emotional Development Through a Simple-to-Administer Mindfulness-Based School Program for Elementary School Children: A Randomized Controlled Trial*, 51 DEV. PSYCHOL. 52 (2015).

25. See UCLA MINDFUL AWARENESS RESEARCH CENTER, <https://www.uclahealth.org/marc/> (last visited Mar. 14, 2019).

Is this explosion of mindfulness without critics? Of course not.²⁶ Some wonder whether this growth is watering mindfulness down and turning it into merely a self-help technique.²⁷ Others fear it is being divorced from ethical teachings (which was integral when it was taught in Buddhist countries) to turn military personnel into better killers,²⁸ to anesthetize children,²⁹ or merely make workers more productive without addressing the systemic issues that lead to burnout.³⁰ Some of this may be true, but I've personally seen the field grow with a lot of integrity.

What is required as the field grows, in my opinion, is ongoing, rigorous support and training for teachers who are bringing mindfulness into these sectors. In the last years I've been part of an effort to create an International Mindfulness Teachers Association to provide licensing for professional mindfulness teacher training programs and qualified individuals. This is still in its early phase, but should help to promote ethical teaching standards, high quality teachers, ongoing continuing education, and the professionalization of the field.

Because many wise educators within law schools have realized the benefit of stress reduction practices, over the years mindfulness has been adopted in the law school setting. It is now regularly being brought into law school curricula³¹ and retreats and training programs are available for lawyers and law students.³² The articles in this review will share with you some of

26. See Daniel Goleman & Matthew Lippincott, *Without Emotional Intelligence, Mindfulness Doesn't Work*, HARV. BUS. REV. (Sept. 8, 2017), <https://hbr.org/2017/09/sgc-what-really-makes-mindfulness-work> (describing mindfulness as the “corporate fad *du jour*” and claiming that mindfulness’ benefits are narrower than often described, and normally associated to an increase in emotional intelligence).

27. See Roman Krznaric, *How We Ruined Mindfulness*, TIME (May 26, 2017), <http://time.com/4792596/mindfulness-exercises-morality-carpe-diem/>.

28. Ronald Purser, *The Militarization of Mindfulness*, INQUIRING MIND, Spring 2014, https://www.inquiringmind.com/article/3002_17_purser-the-militarization-of-mindfulness/.

29. Diana Winston, *Is Mindfulness the Dharma? and Other Questions*, INQUIRING MIND, Spring 2015, https://www.inquiringmind.com/article/3102_18_winston-is-mindfulness-the-dharma-and-other-questions/.

30. See Little, *supra* note 16 and accompanying text.

31. See, e.g., Tim Iglesias, *Offering and Teaching Mindfulness in Law Schools*, 49 U. S. F. L. Rev. F. 24 (2014-2015); Nathalie Martin, *Think Like a (Mindful) Lawyer: Incorporating Mindfulness, Professional Identity and Emotional Intelligence in the First-Year Law Curriculum*, 36 UALR L. Rev. 413 (2014); *Mindfulness at Berkeley Law*, U.C. BERKELEY, <https://www.law.berkeley.edu/students/mindfulness-at-berkeley-law/> (last visited Mar. 14, 2019); U. MIAMI L. SCH., MINDFULNESS IN LAW PROGRAM, <https://www.law.miami.edu/academics/mindfulness-in-law-program> (last visited Mar. 14, 2019). For a list of programs that have offered mindfulness classes for students see Scott Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 Touro Law Review 1189 (2012).

32. See, e.g., MINDFULNESS IN LAW SOCIETY, <https://mindfulnessinlawsociety.com> (last visited Mar. 14, 2019).

the innovations, as well as the significant issues, challenges and potential for mindfulness in the field of law. I am delighted to support this project that will further the discourse, provide tools for those interested, explore relevant questions and concern, and help to embed mindfulness more deeply into the legal community.