

Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support

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I. INTRODUCTION

Riskin's introduction of mindfulness¹ to new audiences is a valuable contribution. It has all the virtues of an hour-long helicopter tour of a Hawaiian island: it offers a quick overview of the most sensational and distinct features. Like the best guides, Riskin crisply describes how he learned about mindfulness, how his teachers described mindfulness to him, and how an increasing number of lawyers and educators (including ourselves) have used mindfulness in our work. As in the best of such tours, one is left excited to learn more.

In particular, one wants to know more about the enticing claims Riskin makes that mindfulness may make lawyers healthier, happier, and better negotiators. Riskin suggests meditation will make lawyers happier people and better negotiators based on what we will classify as mood effects (the improvement of mood due to meditation), mood-success effects (the association of more successful negotiation with better moods), awareness effects (due to seeing things in more

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1. 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 (2002) [hereinafter Riskin, *Contemplative Lawyer*].

effective ways) and freedom effects (the ability to make choices due to seeing things in more effective ways). These are important claims, and they are supported by personal experience, traditional meditation teachings, and scientific study. We agree mindfulness may bring many of these benefits. In addition, forms of meditation other than mindfulness, including concentration practices like transcendental meditation, may also offer at least some of the same benefits. In short, while we agree mindfulness meditation may help many lawyers and negotiators, we also think that Riskin's introduction may also help launch new efforts to craft meditation training that further exploit what psychological theory and empirical study show about psychology, negotiation, and meditation.

II. NOT JUST MINDFULNESS: THE PROMISES OF MEDITATIONS

Meditation involves shifting our mind's focus from its habitual objects—like plans, wishes, and thoughts—to some other object.² Riskin quickly describes one common path taught in the United States: a focus solely on one's breath in and out, gradually expanding to other senses (one's bodily sensations, thoughts, and so on). Other meditation schools focus on different objects: visualizing a pleasant sight like a beach, certain sounds like the traditional *om* sound, certain words or "mantras" as used in the popular Transcendental Meditation series. These meditation paths and meditation objects differ for at least two reasons.

First, even when teachers want students to get the same effects, they often find that different people work best with different objects of meditation. Some differences are cultural, like the shift in Benson's relaxation response from focusing on Sanskrit mantras to focusing on a single number.³ Other differences are more individualistic. To take an extreme case, one prominent meditation teacher reports he cannot focus on his breath because it brings up traumatic memories of when he was abused as a child.⁴ In more mundane ways, traditional meditation teachings recognized particular kinds of meditation objects might better fit some individuals, like the simplicity of meditation on food for children or the changing stains in cloth for those less intelligent in some way.⁵ Partly to fit such different reactions, one successful program using meditation with persons who

2. DANIEL GOLEMAN, *THE MEDITATIVE MIND* 2 (1977).

3. HERBERT BENSON, *THE RELAXATION RESPONSE* (1975).

4. GAVIN HARRISON, *IN THE LAP OF THE BUDDHA* 131 (1994).

5. Joseph Goldstein, *The Buddha's Sacred Journey*, in *VOICES OF INSIGHT* 9, 20-21 (Sharon Salzberg ed., 1999).

have abused drugs gives clients options to follow their breath, use a mantra, or count their breaths, later introducing other aspects of mindfulness meditation.⁶

Second, different instructions in meditation sometimes suggest different meditation objects because they have different goals. Modern psychologists and scientists have not simply lifted the teachings and practices of Buddhist retreat centers in Asia and transplanted them into stress-management clinics, drug treatment programs, and classes to prevent the relapse of depression. Instead, they have shifted the particular objects of mindfulness to fit these different contexts. When Buddhist teachers wanted meditators to overcome what Buddhism taught were the dysfunctions of seeking happiness from pleasant experience, it made some sense to pick meditation objects like “decaying corpses: for example, a bloated corpse, a gnawed corpse, a worm-infected corpse, etc. . . .”⁷ Such objects fit contemporary negotiators a great deal less!

Third, health scientists (be they psychologists, psychiatrists, or trained otherwise) sometimes adapted not just the objects of meditation but also the crucial background teachings. Riskin describes insights about how materialism does not bring happiness, and intensive meditation retreats often involve similar background teachings in the form of evening dharma talks.⁸ Likewise, meditation classes, like those of the well-studied and successful Kabat-Zinn classes on “mindfulness-based stress reduction,” also involve teachings, such as lessons on stress.⁹ Programs that use meditation to treat addiction, depression, and self-destructive behavior also often include particular education and skills components.¹⁰ Traditional meditation retreats regulate eating to promote meditation, such as limiting food

6. See G. Allan Marlatt, *Cognitive Assessment and Intervention Procedures for Relapse Prevention*, in *RELAPSE PREVENTION: MAINTENANCE STRATEGIES IN THE TREATMENT OF ADDICTIVE BEHAVIORS* 241 (G. Allan Marlatt & Judith R. Gordon eds., 1985). In a similar way, the well-studied Kabat-Zinn programs allows individuals to focus on physical sensations while lying down, on the breath and other objects while seated, or on physical movements during yoga stretches. JON KABAT-ZINN, *FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS* (1990).

7. GOLEMAN, *supra* note 2, at 7.

8. See, e.g., JOSEPH GOLDSTEIN, *THE EXPERIENCE OF INSIGHT: A SIMPLE AND DIRECT GUIDE TO BUDDHIST MEDITATION* 17 (1987) (compiling such talks). Indeed, one of Riskin’s regular teachers, Flickstein, includes in his guide to meditation a lengthy list of “insights” that meditation will bring about. MATHEW FLICKSTEIN, *SWALLOWING THE RIVER GANGES: A PRACTICE GUIDE TO THE PATH OF PURIFICATION* 70 (2001).

9. KABAT-ZINN, *supra* note 6, at 248-52.

10. See ZINDEL V. SEGAL ET AL., *MINDFULNESS-BASED COGNITIVE THERAPY FOR DEPRESSION* 52 (2002) (describing how researchers modified the Kabat-Zinn mindfulness

in the afternoon. Similarly, one treatment for borderline personality disorder (often characterized by self-destructive behavior) includes training in mindfulness and guidance about appropriate food and sleep.¹¹

And yet, despite some variation in meditation objects and background teachings, the programs still share several common features. At a first level, disparate mindfulness practices emphasize recognizing rather than reacting. For instance, programs for depression may focus on recognizing thoughts that lead to depression,¹² drug addiction programs may focus on recognizing the “cravings” that fuel addictive behavior, and stress management programs may focus on recognizing the fears that any pain will never end. Each program emphasizes that individuals can recognize and experience impulses without acting on them: we¹³ can recognize the beginning of catastrophic thoughts before they spiral into a cycle of rumination and depression,¹⁴ we can recognize craving rather than going out to buy heroin,¹⁵ and we can recognize the physical symptoms of fear without concluding disaster is inevitable.¹⁶

program “to deal with themes of preventing depression relapse”); *id.* at 96-98 (reproducing background materials given to participants in mindfulness program for depression); *id.* at 203-05 (illustrating how class discussed specific list of recurrent thoughts that persons prone to depression often have). Likewise, Tara Bennett-Goleman uses dysfunctional schemas as an object of meditation. See TARA BENNETT-GOLEMAN, *EMOTIONAL ALCHEMY: HOW THE MIND CAN HEAL THE HEART* 9 (2001).

11. MARSHA M. LINEHAN, *COGNITIVE-BEHAVIORAL TREATMENT OF BORDERLINE PERSONALITY DISORDER* 150 (1993).

12. SEGAL ET AL., *supra* note 10, at 6.

13. We use “we” advisedly. It would be easy enough to write instead of how therapists apply mindfulness to treating various “them’s”: depressives, addicts, and borderlines. Instead, both mindfulness and much contemporary psychology recognize all of us may have mixes of various impulses. See generally SEGAL ET AL., *supra* note 10, at 56 (emphasizing that those trying to teach mindfulness for depression should themselves have their own meditation practice).

14. See SEGAL ET AL., *supra* note 10.

15. A leading text on treating addiction makes this mental noting explicit:

The key ingredient in this intervention process is to teach the client to accurately label the urge when it occurs; one practical method is to suggest that the client make a brief mental notation whenever the response occurs (i.e., to note to oneself, “craving response” or “urge response”).

Marlatt, *supra* note 6, at 241.

16. LINEHAN, *supra* note 11, at 145 (“Learning to describe requires that the individual learn not to take her emotions and thoughts literally—that is, as literal reflections of environmental events. For example, feeling afraid does not necessarily mean that a situation is threatening to one’s life or welfare.”)

At a second level, mindfulness emphasizes observing rather than judging.¹⁷ Implicitly or explicitly, mindfulness often draws on some version of what Joseph Goldstein calls “non-identification”: we do not identify ourselves with merely one of our many changing and competing impulses, be it an impulse to take drugs or think of the worst.¹⁸ In explaining how meditation helps prevent people with histories of depression from spiraling into depression again, Teasdale and his colleagues suggest that “a patient’s perspective on thoughts and feelings of worthlessness might change from one in which they are experienced as the ‘reality by which I am condemned’ to one in which they are experienced more as ‘passing thoughts and feelings that may or many not have some truth in them.’”¹⁹ Or, one might mindfully stop before washing one’s hands five times to note, “It’s not me, it’s OCD [obsessive-compulsive disorder].”²⁰

To complicate matters, however, not all successful meditation programs draw on mindfulness. Instead, many meditation paths instead emphasize fixing on a particular object, be it breath, a particular color, a mantra, or a religious figure. In such concentration practices, whatever the object, “the meditator’s attentional strategy is to fix his focus on a single precept, constantly bringing back his

17. As Riskin notes, the insight tradition heavily emphasizes non-judgment. Linehan’s use of mindfulness meditation for those with borderline personality disorder alludes instead to Zen practice. LINEHAN, *supra* note 11. See also JOHN KABAT-ZINN, *WHEREVER YOU GO, THERE YOU ARE* (1994); JEFFREY M. SCHWARTZ WITH BEVERLY BEYETTE, *BRAIN LOCK: FREE YOURSELF FROM OBSESSIVE-COMPULSIVE BEHAVIOR* 11, 215-16 (1996) (observing that mindfulness is also like the advice of economist Adam Smith, who taught that people should try to view their lives as if they were impartial spectators).

18. JOSEPH GOLDSTEIN, *INSIGHT MEDITATION: THE PRACTICE OF FREEDOM* (1993). Although Goldstein yokes this idea to Buddhist concepts of no-self, other authors tie the idea to disparate Western thinkers. See, e.g., MARK EPSTEIN, *GOING ON BEING: BUDDHISM AND THE WAY OF CHANGE, A POSITIVE PSYCHOLOGY FOR THE WEST* (2001) (discussing how the author’s practice of therapy draws on both Freud and Buddhism); CARL JUNG, *Phenomenology of the Self*, in *THE PORTABLE JUNG* 139, 145 (Joseph Campbell ed., 1971) (noting that “dark aspects of the personality” that remain unconscious are the shadow of a person).

19. John D. Teasdale et al., *Metacognitive Awareness and Prevention of Relapse in Depression: Empirical Evidence* 6 (December 2001) (unpublished manuscript; on file with author). See also Judith Gordon, *Harm Reduction Psychotherapy Comes Out of the Closet*, 4 *IN SESSION: PSYCHOTHERAPY IN PRACTICE* 69, 75 (1998) (“[W]e would never expect that depression or anxiety could be entirely eliminated: A single depressive thought or episode would never be considered a failure of the individual or the treatment.”).

20. SCHWARTZ, *supra* note 17, at 7.

wandering mind to this object."²¹ It is worth keeping such concentration practices in mind because, as discussed in the next section, studies show they deliver many of the same benefits as mindfulness. Such concentration practices also match aspects of what many, including Riskin, describe as mindfulness practices. Many programs, including those offered to lawyers and law students that Riskin describes, include some periods of pure concentration practices. In part, the concentration works best to quiet the mind so one may engage in mindfulness; otherwise, one may be easily overwhelmed by one's thoughts, images, and emotions.²²

III. EMPIRICAL SUPPORT FOR VARIETIES OF MEDITATION

The good news is that veterans of various meditation programs show some improvement in mood, including those that emphasize mindfulness (like Kabat-Zinn's) and those that emphasize concentration (like transcendental meditation). In particular, veterans of both programs report fewer symptoms of depression and anxiety in the last week or two.²³

This link between meditation and improved mood fits a larger emerging psychological framework. Many psychological theorists now trace many psychological problems to the habitual avoidance of a wide range of disturbing internal and external experiences.²⁴ Such avoidance includes everything from over-stimulating oneself with distractions, suppressing thoughts and emotions, abusing substances, eating too much, eating too little, and generally restricting one's activities. Moreover, other research on physical health links avoidance with worse outcomes for heart disease, cancer, and HIV.²⁵ In principle, mindfulness aspects of meditation allows one to replace

21. GOLEMAN, *supra* note 2, at 105.

22. *Id.* See also FLICKSTEIN, *supra* note 8, at 43. As at the retreats for lawyers and meditators, mindfulness instructors often include more specific concentration meditations designed to bring about other states of mind, such as meditations on loving-kindness or friendly feeling. See Riskin, *Contemplative Lawyer*, *supra* note 1, at 65 n.272. More fundamentally, mindfulness meditation itself can be understood as a kind of concentration practice as well. In the insight tradition of mindfulness meditation, one pays attention only to whatever most dominates one's attention at that time: sometimes, this may be the breath, sometimes thinking, sometimes emotion, and so on. See FLICKSTEIN, *supra* note 8, at 43.

23. SEGAL ET AL., *supra* note 10.

24. Steven C. Hayes et al., *Experiential Avoidance and Behavioral Disorders: A Functional Dimensional Approach to Diagnosis and Treatment*, 6 J. OF CONSULTING & CLINICAL PSYCHOL. 1152 (1996).

25. Tracy J. Mayne, *Negative Affect and Health: The Importance of Being Earnest*, 13 COGNITION AND EMOTION 601 (1999).

avoidance with a technique to experience negative thoughts and events without being consumed by them.

In contrast, concentration techniques may be thought to seem to resemble the very avoidance associated with worse psychological and physical outcomes; they shift concentration away from problems to a specific subject. However, the success of concentration exercises in improving mood may be consistent with another approach to mood: one might hypothesize that mood is naturally positive if negative effects, (or what Buddhists call “hindrances”), like stress do not occur. Thus, concentration techniques may allow one to overcome these negative effects and return to a “natural” positive mood after a period of concentration.²⁶

But there are two important caveats. First, meditation does not mean every individual is in a better mood at all times. A meta-analysis of seventy-five scientific studies on meditation shows that 62.9% of meditators experienced some negative side-effects, including “relaxation-induced anxiety and panic; paradoxical increases in tension; less motivation in life; boredom; pain; impaired reality testing; confusion and disorientation; feeling ‘spaced out’; depression; increased negativity; being more judgmental.”²⁷ Meditation teachers themselves recognize that those who meditate mindfully will notice periods of better moods and periods of worse moods.²⁸ Based on our own experience, we agree such periods often fade away, and that meditation generally enriches the lives of most who practice regularly.

Second, even when meditation does reduce negative mood, this reduction in negative mood does not entirely track the majority of studies on mood in negotiation. Although some studies show *negative* mood increases some bad habits in negotiation, like anchoring,²⁹ much research instead associates *positive* mood with success at a whole range of higher level cognitive activities, from negotiations by

26. See, e.g., SHARON SALZBERG, *A HEART AS WIDE AS THE WORLD: STORIES ON THE PATH OF LOVING-KINDNESS* 4 (1999).

27. Alberto Perez-De-Albeniz & Jeremy Holmes, *Meditation: Concepts, Effects and Uses in Therapy*, 5 INT’L J. PSYCHOTHERAPY 49 (2000), available at <http://www.trancenet.org/research/2000perezdealbeniz.shtml>.

28. Indeed, they note that, in the short-run, many people may experience new negative feelings when they begin to see all the thoughts and feelings they had previously overlooked or even avoided. See, e.g., JACK KORNFELD, *A PATH WITH HEART* 72 (1993).

29. Galen Bodenhausen et al., *Sadness and Susceptibility to Judgmental Bias: The Case of Anchoring*, 11 PSYCHOL. SCI. 320 (2000) (showing that sad persons were more subject to the anchoring bias).

business students to quicker diagnoses by professors of medicine.³⁰ Some studies on mood and negotiation also focus on very *short-term* mood, like the brief buzz from a funny video or pleasant scent.³¹ But the meditation studies focus more on *medium-term* moods (such as the last week or two) and negative moods (such as symptoms of depression and anxiety).³² We do not mean to exaggerate this gap: reducing the number of persons in medium-term negative moods may very well also reduce the presence of dysfunctional negative moods in the short-term and may very well increase the chances of positive moods in the short-term.³³

In contrast to these complex findings, existing research more neatly shows that both regular concentration and mindfulness meditation are associated with greater awareness. Thus, even if meditators will not always have the kinds of positive moods associated with negotiation success, they may have the awareness of their own mood to recognize how it may affect their negotiating. Although psychologists do not refer to “seeing clearly” as meditation teachers may, nor to awareness effects as we do, they use the related concept of cognitive flexibility to measure how well people can develop different options and solutions.³⁴ Other researchers have shown that both concentration practices like transcendental meditation and varieties of mindfulness training are associated with relatively abstract measures of cognitive flexibility, including a structured word-production task and an unstructured creative mental activity task.³⁵ The idea that mere concentration can lead to greater flexibility deserves some explanation. According to meditation teachers and Buddhist philosophy, the mind naturally is relatively flexible but various hindrances,

30. Roderick Kramer et al., *Self-enhancement Biases and Negotiator Judgment: Effects of Self-Esteem and Mood*, 56 *ORG. BEHAV. & HUM. DEC. PROC.* 110 (1993) (business students); Alice Isen et al., *The Influence of Affect on Clinical Problem Solving*, 11 *MEDICAL DECISION MAKING* 221 (1991) (doctors).

31. Kramer et al., *supra* note 30 (funny video); Robert A. Baron, *Environmentally Induced Positive Affect: Its Impact on Self Efficacy, Task Performance, Negotiation and Conflict*, 20 *J. OF APPLIED SOC. PSYCHOL.* 368 (1990) (scent).

32. See, e.g., SEGAL ET AL., *supra* note 10.

33. Our own pilot research with law students in negotiation classes shows that those with higher levels of symptoms of depression early in the semester were more likely to have higher degrees of short-term negative mood before any given negotiation.

34. Matthew M. Martin & Rebecca B. Rubin, *A New Measure of Cognitive Flexibility*, 76 *PSYCHOL. REP.* 623 (1995).

35. Charles N. Alexander et al., *Transcendental Meditation, Mindfulness, and Longevity: An Experimental Study with the Elderly*, 57 *J. OF PERSONALITY & SOC. PSYCHOL.* 950 (1989).

like restlessness, sleep, and chronic skepticism, obscure this ability³⁶—much as negotiation theorists implicitly assume that negotiators can be naturally rational but that various psychological “barriers” interfere.³⁷ Thus, concentration may unearth this natural ability.

There is further support for awareness effects of mindfulness. Recent studies on mindfulness-based approaches to depression show that those trained in mindfulness meditation still had depressive thoughts (such as “I’m so helpless” or “My future is bleak”)³⁸ but they succeeded in changing the way they viewed those thoughts. Specifically, those in the mindfulness programs tended to identify their depressive thoughts simply as depressive thoughts rather than worrying about the content of the thoughts.³⁹ And this change in awareness was itself associated with fewer symptoms of depression.⁴⁰ The implications extend far beyond depression: therapists from a variety of perspectives see the development of such awareness as crucial to changing behavior and improving mental health.⁴¹

There is also some empirical support for freedom effects. Viewing freedom effects abstractly, one may infer freedom effects from better scores on tests of cognitive flexibility. But mere awareness of options in abstract tests is an imperfect proxy for the freedom to make more skillful choices in negotiations or other concrete activities. After all, one may have awareness of choices without the ability to choose skillfully between them.

Research provides partial support for the theory that mindfulness meditation may lead to freedom for individuals to overcome addictive and self-destructive impulses. As mentioned above, prominent treatments for both drug addiction and self-destructive behavior—often associated with “borderline personality disorder”—include mindfulness applied directly to craving impulses and self-destructive impulses. Absent some kind of impulse control, those who used drugs in the past may use again, and those who harmed themselves in the past may also do so again. Careful studies of programs that include mindfulness show the programs as a whole are

36. See, e.g., SALZBERG, *supra* note 26, at 146.

37. See Robert H. Mnookin, *Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflicts*, 8 OHIO STATE J. ON DISP. RESOL. 235 (1993).

38. Segal et al., *supra* note 10, at 204.

39. Teasdale et al., *supra* note 19, at 32-33.

40. *Id.*

41. Teasdale et al., *supra* note 19, at 31.

associated with less frequent use of drugs and less frequent self-destructive behavior.⁴² Based on such research, clinical guidelines now list programs that include mindfulness as useful treatments for both addiction⁴³ and borderline personality disorder.⁴⁴

As with many studies of how well various therapeutic programs improve outcomes, these leave open some room for doubt. In many programs studied, mindfulness is often part of a larger program that includes other components, such as education in daily coping skills. Therefore, one could argue that a large part of the success comes not from freedom induced by mindfulness but from some other part of the larger program.⁴⁵

This qualification should not be exaggerated. After all, as we saw above, mindfulness traditionally is taught as part of some kind of larger program, such as Buddhist philosophy. In addition, modern advocates of mindfulness like Riskin see it as an aspect of one's life, not as a complete program for every moment of one's life. Still, as with most areas, the research leaves much room for further study of mindfulness and other meditation training.

IV. ADAPTING MEDITATION TRAINING TO LAWYERING AND NEGOTIATION

So far we have seen that there are more varieties of meditation than the particular mindfulness tradition that Riskin and the prior law retreats have highlighted. In addition, both some empirical research and some theoretical frameworks show how many kinds of meditation may promote better moods, enhance awareness and lead to more successful negotiations. If nothing else, such considerations give many lawyers and negotiators reasons to try one of the already established meditation programs—and legal educators a reason to follow Riskin's own example and offer one of the established programs to law students. But the research above also gives us the opportunity to think about how one might tweak some existing programs so they better fit the particular needs of lawyers and negotiators.

42. Kelly Koerner & Linda A. Dimeff, *Further Data on Dialectical Behavior Therapy*, 7 *CLINICAL PSYCHOL.: SCI. & PRAC.* 104, 105 (2000).

43. Dianne L. Chambless & Thomas H. Ollendick, *Empirically Supported Psychological Interventions: Controversies and Evidence*, 52 *ANN. REV. PSYCHOL.* 685, 693 (2001).

44. *Id.* at 696 (listing empirical support for "dialectical behavioral therapy," which refers to Linehan's therapy, including mindfulness).

45. Cf. Karen R. Scheel, *The Empirical Basis of Dialectical Behavior Therapy: Summary, Critique, and Implications*, 7 *CLINICAL PSYCHOL.* 68, 79 (2000).

To be sure, some traditional meditations apply directly to lawyering and negotiating. For example, many meditation teachers emphasize being mindful of the intention that precedes an action; this intention is either a conscious thought or simply the space that immediately precedes an action.⁴⁶ This mindfulness of intentions can be taught quite readily in walking meditation; people may note how there is an intention before lifting the foot to walk, an intention to set it down, and so on. Negotiation students may find this very helpful in learning to notice the intention before speaking.⁴⁷ Such pauses may give the negotiator the opportunity to consider various alternatives or to defuse automatic but irrational impulses.

Still, we think it may also be helpful to begin adding meditation objects particular to negotiation. Consider positional bargaining. Many people argue that negotiators can reach more efficient agreements if they focus not merely on positions (I need this salary) but on interests (I need so much salary, some way to move, some way to pay health care).⁴⁸ Mindful negotiation training could include training people to label positional impulses as they arise rather than acting on them. Existing meta-analyses suggest negotiators fail to identify opportunities for tradeoffs in nearly half of their negotiations.⁴⁹ Training negotiators to note a “competing impulse” before rejecting a potential tradeoff may cut this tendency substantially.

More broadly, meditation might also include awareness of other possible labels for negotiation approaches. For example, many negotiation teachers now use the popular Thomas-Kilman test to identify various other negotiation approaches: competing, avoiding, collaborating, accommodating, and cooperating. One prominent text treats such impulses as a fixed feature of personality and suggests that we determine how best to apply the styles that we are more or less stuck with.⁵⁰ In contrast, other writers suggest that one style or another may dominate our thoughts and behavior in different contexts.⁵¹ We have developed one simple meditation technique to convey this point

46. GOLDSTEIN, *supra* note 8, at 47-48.

47. GOLDSTEIN, *supra* note 8, at 81 (“as the mindfulness gets sharper, we begin to be aware before talking—the intention to speak arises and we’re mindful of it” and decide whether it’s useful to speak).

48. See, e.g., ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* (2000).

49. See Leigh Thompson & D. Hrebec, *Lose-lose Agreements in Interdependent Decision Making*, 120 *PSYCHOL. BULL.* 396 (1996).

50. G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE* (1999).

51. See, e.g., MNOOKIN ET AL., *supra* note 48, at 58.

with students. We have students notice where they feel sensation in their body and where they do not notice sensation. Among other things, we then have them focus on where they have no feeling, such as their middle toe when they are seated. We have them notice this for some time, and then we let them “check” that their toe is still there. We then explain that their unfelt toe is very much like their dormant approaches to negotiation: at any given time, they may be so competitive they cannot see any common ground, but they may learn to shift at other times to explore possibilities for win-win solutions.

Mindful negotiation can go further still by adding objects based on other links to existing empirical research, such as common psychological barriers to negotiation and common conditions conducive to successful negotiation. Objects based on such empirical links may make mindfulness more useful to those who practice it and may also entice those who would not otherwise meditate. In addition, to attract skeptics, it may be useful to emphasize one of the more discomforting aspects of negotiation teacher experience and recent systematic study: negotiation students still make the same irrational mistakes even after they have been told about them!⁵²

Consider some easy examples: one might learn to notice when, as one saw the sticker price, an “anchoring” effect arose and note “anchoring.” Or lawyers might learn to realize when they are discounting the value of a settlement because it came from someone they saw as an opponent; here they might label this as “reactive devaluation.”⁵³ In our classes, we are particularly aware that students often neglect efficient possible agreements because they so automatically nay-say whatever creative possibilities the other side suggests. Does the other person suggest tax benefits of different structures? If so, many a student will immediately say, “Well that can get very complicated? I mean, where do we find out? And what if those benefits change? And what if we’re wrong”

We’ve found one label that sticks a bit better than “reactive devaluation.” We say that brainstorming possibilities is most like playing Mr. Potato Head. Try to treat another idea as the potato and see how many ideas you can add on to that. If someone suggests the tax consequences for health benefits, consider other possibilities: why not

52. See, e.g., MAX H. BAZERMAN, *JUDGMENT IN MANAGERIAL DECISION MAKING* 207 (3d ed. 1994); Leigh Thompson, *A Method for Examining Learning in Negotiation*, 1 *GROUP DECISION AND NEGOT.* 71 (1992).

53. Lee Ross, *Reactive Devaluation*, in *BARRIERS TO CONFLICT RESOLUTION* 26 (Kenneth Arrow et al. eds., 1995).

have some salary reclassified as moving expenses and avoid that taxation, too? When the impulse to criticize arises, remember, “Don’t Kick Mr. Potato Head.”⁵⁴ This label refers to the habitual and never-ending criticism. As such criticisms arise during brainstorming, or potential brainstorming, negotiators can note, Kicking Mr. Potato Head. Or, to use a positive note, when wondering whether spending too much time negotiating, they might note, “negotiator dance” to refer to the idea that it may take time to reach an optimal agreement.

Social science research also suggests another promising object for mindful negotiators involves emotions. This is already a traditional part of much mindfulness meditation.⁵⁵ And Tara Bennett-Goleman has made an additional contribution by labeling the antecedents of negative emotions with labels for maladaptive schemas.⁵⁶ But there is a startling gap between many of the labels and much of the research on how mood affects negotiation. Many of the mindfulness labels simply involve recognizing and noting *negative* emotions or *negative* sensations. In part, this can be very useful. Relatively recent research shows how angry negotiators often make very inaccurate assumptions about what others want, and therefore, overlook the possibility of more efficient agreements.⁵⁷ Thus, it is quite useful to train negotiators to recognize and note their anger. They may then wait for that anger to pass, or perhaps negotiate at some other time. Or, they may try to make additional efforts to correct for the anger, such as deliberately making more efforts to see what the “opponents” really want.⁵⁸

At the same time, it is important to pay much more attention than traditional meditation instructors often do to *positive emotions*. Too often, meditation instructions focus on opening up awareness to

54. For other examples of humorous mental noting, see GOLDSTEIN, *supra* note 18, at 65.

55. See, e.g., GOLDSTEIN, *supra* note 8, at 17-18.

56. See BENNETT-GOLEMAN, *supra* note 10.

57. Keith Allred et al., *The Influence of Anger and Compassion on Negotiation Performance*, 70 *ORG. BEHAV. & HUM. DECISION PROCESSES* 175 (1997).

58. Clark Freshman, Adele M. Hayes & Greg C. Feldman, *The Lawyer-Negotiator as Mood Scientist: What We Know and Don’t Know About How Mood Leads To Successful Negotiation*, 2002 *J. DISP. RES.* 1 (forthcoming 2002).

pain and unpleasant emotions.⁵⁹ After all, much of the strongest empirical support shows positive emotions associated with better negotiation results.⁶⁰

Such mood awareness may be useful in letting individuals know how various activities may affect their moods, and therefore, the odds of success at negotiation. For instance, some studies show that certain scents—including commercial air fresheners—induce positive mood and better negotiation results.⁶¹ However, a given negotiator might mindfully notice this does not work; instead the negotiator may find commercial air freshener has no effect or, worse, provokes allergic sneezes and a worse mood—such as anger at whoever sprayed the stuff! By practicing mindfulness of emotions on a regular basis, negotiators may learn the kinds of smells, sounds, thoughts, and so on that may affect their moods—and, according to empirical research, their success in negotiation. Therefore, in teaching negotiation, one might have students keep track for a week of the specific sounds, smells, sights, thoughts, that seem to change their moods.⁶²

Ultimately, the effects of mindfulness training take time. Meditation, be it mindfulness or otherwise, will not easily eradicate all of the psychological barriers to rational and wise settlements that social psychologists have spent years documenting—nor inculcate the conditions for creativity and collaboration that the emerging positive psychology movement has begun to identify. Riskin himself candidly revealed that, in writing his article on mindfulness, he was not mindful enough to prevent making a mess while making coffee—twice in a row!⁶³ And one of us (Freshman) has his own confession while working on this article, as captured in his journal:

59. Grove Barnett, one of the meditation teachers at the October, 2001 retreat for lawyers and law professors, told one of us that the Theravadan tradition in particular often focuses on opening to negative emotions. Goldstein and Kornfield, however, do acknowledge the importance of positive mind states, such as “rapture,” as qualities that promote enlightenment, but we have found this view less frequently taught. JOSEPH GOLDSTEIN & JACK KORNFIELD, *SEEKING THE HEART OF WISDOM: THE PATH OF INSIGHT MEDITATION* 85-86 (2001). See also EPSTEIN, *supra* note 18, at 175-76.

60. See, e.g., Alice M. Isen, *On the Relationship Between Affect and Creative Problem Solving*, in *AFFECT, CREATIVE EXPERIENCE, AND PSYCHOLOGICAL ADJUSTMENT* 3 (Sandra W. Russ ed., 1999).

61. Baron, *supra* note 31.

62. SEGAL ET AL., *supra* note 10, at 275-78 (describing such awareness of what activities are associated with what moods in a mindful approach to depression).

63. Riskin, *Contemplative Lawyer*, *supra* note 1, at 30 n.126. See generally GOLDSTEIN & KORNFIELD, *supra* note 59, at 217 (“It can be quite discouraging after touching a new level of peace or purity in the heart to see the power of our old habits. But this is just the place for the application of our practice. We are asked to relate with understanding instead of judgment, to see with love and awareness.”).

I spent the morning working mostly on the mindful negotiation article. But I also remembered to call for a physical. As usual, I got put on hold. So I found myself noticing anger arising and decided to occupy myself reading part of a book that might apply to the article. As I picked out the book, I got put on hold again. I finally tried settling down to reading about the irrational escalation of conflict, like when people bid more than \$20 for a \$20 bill.⁶⁴ But it wasn't enough to keep me from getting annoyed when I saw I'd been on the phone 15 minutes. The next thing I remember I was speaking to the office manager about the *outrageous* wait when it crossed my mind to note "irrational escalation of conflict." I got off the phone quickly and started to feel bad, but then thought: what a great example for the article . . .

In other words, mindfulness and meditation, like negotiation itself, is less a single destination than a set of possible journeys. Riskin's groundbreaking work lets us share part of his own journey, the symposium issue introduces the experiences of others, and, we hope, inspires other journeys—and other occasions to share them together.

64. See, e.g., MAX H. BAZERMAN & MARGARET A. NEALE, *NEGOTIATING RATIONALLY* 11 (1992).

