

THE ROLE OF INTUITIVE REASONING IN LAWYERING AND LEGAL EDUCATION

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“The life of the law has not been logic: [I]t has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.”¹

“Some call it ‘intuition’—some[] ‘imagination,’ this sensitiveness to new ideas, this power to range when the track is cold, this power to cast in ever widening circles to find a fresh scent, instead of standing baying where the track was lost.”²

INTRODUCTION

Intuition—a process of “rapid cognition”³ that offers foresight and helps with creative problem-solving—is a powerful tool that lawyers can use to inform strategic decisions, avoid ethical pitfalls, enhance communication, and increase career satisfaction. However, many law students come to law school after decades of being taught to trust only external sources—such as data and authority figures—and out of touch with their internal, intuitive resources.

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¹ R. George Wright, *The Role of Intuition in Judicial Decisionmaking*, 42 HOUS. L. REV. 1381, 1382–83 (2006) (quoting OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (Dover Publ’ns 1991) (1881)).

² Joseph C. Hutcheson, Jr., *The Judgment Intuitive: The Function of the “Hunch” in Judicial Decision*, 14 CORNELL L. REV. 274, 280 (1929).

³ MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* 51 (2005).

Law schools exacerbate this disconnect by prioritizing grades, awards, rankings, prestigious jobs, and other external sources of satisfaction and meaning. Indeed, the study of law is primarily the study of external sources of guidance, such as rules and standards articulated by various bodies. Even the study of ethics in law school often focuses mainly on ethical rules, rather than students' inner resources.

In contrast, “[t]he intuitive mode is characterized by engagement of the will, involvement of the senses, receptivity, a quest for understanding or meaning, and a facilitative tension between subjective certainty and objective uncertainty.”⁴ One important book on intuition in education posits that “every person has the ability to think intuitively and that intuition invariably yields truth.”⁵ Another author suggests that the power of intuition “is not a gift given magically to a fortunate few,” but instead “an ability that we can all cultivate for ourselves.”⁶

Beyond legal education, educational theorists and scholars propose that intuition is a quality that can be nurtured and taught through various deliberate strategies, including intuitive arrangements of curriculum and instructional materials, acknowledging and discussing intuition in the classroom, and avoiding classroom dynamics that discourage students' internal wisdom by, for example, conveying that there is only one right answer, known to the teacher and to be discovered by the student.⁷

This article will explore the meaning, applicability, and promise of intuition in the context of effective, ethical lawyering and propose that law schools can—and should—teach students how to access their own internal guidance systems. Part I will define intuition and trace its history, as well as discuss its value to effective lawyering. Next, Part II explores the ways that Western culture and traditional legal education discourage and repress intuition. Finally, Part III proposes concrete ideas for teaching and supporting intuition in law school in an effort to help students become more ethical, more effective, and more satisfied lawyers.

⁴ NEL NODDINGS & PAUL J. SHORE, *AWAKENING THE INNER EYE: INTUITION IN EDUCATION* xiv (1984).

⁵ *Id.* at 176 (citing FRANCES E. VAUGHAN, *AWAKENING INTUITION* (1979)).

⁶ GLADWELL, *supra* note 3, at 16.

⁷ See Jennifer M. Cooper, *Smarter Law Learning: Using Cognitive Science to Maximize Law Learning*, 44 CAP. U. L. REV. 551, 553 (2016) (citing Susan Fanetti et al., *Closing the Gap Between High School Writing Instruction and College Writing Expectations*, 99 ENG. J. 77, 78 (2010)) (observing that “more emphasis on standardized testing and less emphasis on rigorous reading and writing tasks” trains students to believe there is only one right answer instead of multiple possible “right” answers).

I. INTUITION OFFERS BENEFITS TO HUMANS GENERALLY, AS WELL AS PROFESSIONAL AND PERSONAL ADVANTAGES TO LAWYERS AND JUDGES SPECIFICALLY

Intuition is a survival trait that developed to protect humans in times of potential danger or risk. While humans today tend to see ourselves as significantly more evolved and much different from our ancestors, we are not very different from a cognitive standpoint. Indeed, “[t]he last 30,000 years are an insignificant amount of time in evolutionary terms: There has been *no time* to improve the development of our mental capacities, our ability to meet the challenges of the environment, our ability to think, reason, and create.”⁸ Modern humans “were designed to respond to immediate danger quickly—those who did lived long enough to produce us.”⁹

In addition to its role in survival, intuition also serves an important function in human thriving. This section will explore the two modes of thinking—intuitive and analytical—as well as discuss the ways that humans use and benefit from intuition. It will then explain how intuitive thinking specifically benefits lawyers in their professional capacity.

A. INTUITIVE THINKING IS AN UNCONSCIOUS PROCESS BASED ON A LIFETIME OF EXPERIENCES THAT PERMITS THE BRAIN TO FUNCTION EFFICIENTLY

Intuitive thinking has allowed humans to live, reproduce, and evolve for millions of years. The part of our brain that generates intuition is called the “adaptive unconscious” and is described as “a kind of giant computer that quickly and quietly processes a lot of the data we need in order to keep functioning as human beings.”¹⁰ First proposed in 2002, this emerging understanding of the adaptive unconscious in the field of psychology posits:

[N]onconscious thinking is an evolutionary adaptation: [T]he mind operates most efficiently by executing most of its higher-level mental functions unconsciously. The adaptive unconscious does an excellent job in assessing, disambiguating, and interpreting stimuli; detecting dangers and warning about them; selecting, learning, and dealing with complex information; [and] setting goals and initiating behavior quickly.¹¹

As opposed to conscious mental processes involving “agency, choice, and concentration,”¹² the adaptive unconscious is responsible for “mental processes

⁸ ROBERT ORNSTEIN, *THE PSYCHOLOGY OF CONSCIOUSNESS* 3 (4th ed. 2021).

⁹ *Id.*

¹⁰ GLADWELL, *supra* note 3, at 11.

¹¹ Jessica Leonardi et al., *The Adaptive Unconscious in Psychoanalysis*, *INT’L F. PSYCHOANALYSIS* 1, 2 (2021) (citing TIMOTHY D. WILSON, *STRANGERS TO OURSELVES: DISCOVERING THE ADAPTIVE UNCONSCIOUS* (2002)).

¹² *Id.*

that are inaccessible to consciousness; proceed in parallel; and influence judgments, feelings, and behaviors.”¹³ These unconscious processes “work bottom-up, or aschematically, quickly, and in a pre-reflexive way. To use a term favored by some authors, they are ‘automatic,’ and imply little or no effort and no sense of voluntary control.”¹⁴

The adaptive unconscious permits the human brain to “operate[] most efficiently by releasing a good deal of high-level, sophisticated thinking to the unconscious.”¹⁵ Indeed, “our core beliefs, mostly developed and acquired implicitly in childhood from real relational experiences with parents and significant others, are themselves unconscious, and guide our expectations about relationships, ourselves, and the way we see the world.”¹⁶

Although often perceived as being an innate reaction without a concrete foundation, instead “[i]ntuition consists of fixed analyses transformed into a quick response habit” and “is the result of many years of experience and training.”¹⁷ Intuition is an unconscious process that involves identifying patterns,¹⁸ as well as taking action or making decisions based on feelings, signals, and interpretations.¹⁹ Based on knowledge from prior learning, intuitive thinking represents “a cognitive conclusion based on [a] decision maker’s previous experiences *and* emotional inputs.”²⁰ For example, at the start of the COVID pandemic in 2020, many businesses and other entities had to make quick decisions about how to navigate a crisis that eliminated the time necessary for “rational, data-driven decisions.”²¹ Zoom, for instance, had to rapidly respond to

¹³ *Id.* (citing WILSON, *supra* note 11).

¹⁴ *Id.* (citing Ap Dijksterhuis & Loran F. Nordgren, *A Theory of Unconscious Thought*, 1 PERSP. ON PSYCH. SCI. 95, 95–109 (2006); and then citing Richard M. Shiffrin & Walter Schneider, *Controlled and Automatic Human Information Processing: II. Perceptual Learning, Automatic Attending and a General Theory*, 84 PSYCH. REV. 127, 127–90 (1977)).

¹⁵ GLADWELL, *supra* note 3, at 12 (quoting WILSON, *supra* note 11).

¹⁶ Leonardi et al., *supra* note 11, at 2 (citing Joseph Weiss, *The Role of Interpretation*, 12 PSYCHOANALYTIC INQUIRY 296, 296–313 (1992)).

¹⁷ Kamila Malewska, *The Profile of an Intuitive Decision Maker and the Use of Intuition in Decision-Making Practice*, 22 MGMT. 31, 33 (2018) (citing ROBIN M. HOGARTH, EDUCATING INTUITION (2001)).

¹⁸ See Laura Kutsch, *Can We Rely on Our Intuition?*, SCI. AM. (Aug. 15, 2019), <https://www.scientificamerican.com/article/can-we-rely-on-our-intuition/>; see also GARY KLEIN, THE POWER OF INTUITION: HOW TO USE YOUR GUT FEELINGS TO MAKE BETTER DECISIONS AT WORK 21 (2003).

A “pattern” is a set of cues that usually chunk together so that if you see a few of the cues you can expect to find the others. When you notice a pattern[,] you may have a sense of familiarity—yes, I’ve seen that before! As we work in any area, we accumulate experiences and build up a reservoir of recognized patterns. The more patterns we learn, the easier it is to match a new situation to one of the patterns in our reservoir. When a new situation occurs, we recognize the situation as familiar by matching it to a pattern we have encountered in the past.

Id.

¹⁹ Malewska, *supra* note 17, at 33.

²⁰ Stephen Leybourne & Eugene Sadler-Smith, *The Role of Intuition and Improvisation in Project Management*, 24 INT’L J. PROJECT MGMT. 483, 484 (2006) (citing L.A. Burke & M.K. Mille, *Taking the Mystery Out of Intuitive Decision-Making*, 13 ACAD. MGMT. EXEC. 91, 93 (1999)).

²¹ Jeff Cohu, *Pandemic Demonstrates the Necessity of Intuitive Decision-Making Skills*, 24

a sudden, unanticipated, and dramatic increase in use of its online communication platform.²² Because Zoom executives did not have the time to research and examine data, they instead adapted to a thirty-fold increase in users by making quick, intuitive decisions about what would work best for the company.²³

The act of intuition arises from a number of cognitive processes: heuristics that assist in reaching judgments; recognition of patterns; and knowledge that becomes “automated or procedural” through practice, inferences resulting from experience, and retrieving learned information.²⁴ The retrieval of patterns based on experience and prior learning “leads to decisions being executed, often very rapidly, upon the basis of an ‘unconscious reasoning’ process which may have an affective component (a ‘gut feel’ or ‘hunch’).”²⁵

Physiologically, intuitive decisions stem from two parts of the brain: the basal ganglia and the insula.²⁶ The basal ganglia “manage the stored routines and patterns that make up your experiences,” while the “insula takes care of body awareness, and is highly sensitive to any changes in your body.”²⁷ They work together to evaluate situations and send signals to the body. In a decision-making situation, the unconscious brain starts to work immediately on making a decision, though we are not consciously aware of this process.²⁸ When we then make a conscious decision about the same situation, the brain compares this rational thinking with the aforementioned intuitive thinking; if both are the same, the brain emits a reward response, leading to a good feeling.²⁹ But if the unconscious and conscious brains do not agree—that is, the conscious decision is inconsistent with the unconscious, intuitive response—the insula sense physiological changes and the decision does not feel good.³⁰ This relationship between the body and the intuition is critical: “[P]art of the process of developing intuition is learning to tune in to the body and be alert to physical cues.”³¹

GRAZIADIO BUS. REV. 1, 2 (2021).

²² *See id.* at 6–7.

²³ *See id.* at 7–8.

²⁴ *See* Jeremy Sutton, *What Is Intuition and Why Is It Important? 5 Examples*, POSITIVEPSYCHOLOGY.COM (Aug. 27, 2020), <https://positivepsychology.com/intuition/>.

²⁵ Leybourne & Sadler-Smith, *supra* note 20, at 484.

²⁶ *See* Jeff Haden, *How the Smartest Minds Use Intuition and Emotional Intelligence to Make Better Decisions, Backed by Science*, INC. (Apr. 8, 2022), <https://www.inc.com/jeff-haden/how-smartest-minds-use-intuition-emotional-intelligence-to-make-better-decisions-backed-by-science.html> (citing FRIEDERIKE FABRITIUS & HANS HAGEMANN, *THE LEADING BRAIN: NEUROSCIENCE HACKS TO WORK SMARTER, BETTER, AND HAPPIER* (2018)).

²⁷ *Id.* (citing FABRITIUS & HAGEMANN, *supra* note 26).

²⁸ *See id.* (citing FABRITIUS & HAGEMANN, *supra* note 26) (“Even if you’re not consciously thinking about it, your unconscious brain starts working on a problem or decision right away.”).

²⁹ *See id.* (citing FABRITIUS & HAGEMANN, *supra* note 26).

³⁰ *Id.* (citing FABRITIUS & HAGEMANN, *supra* note 26).

³¹ VAUGHAN, *supra* note 5; *see also* NODDINGS & SHORE, *supra* note 4, at 72, 89 (describing the role of the senses in intuition).

Although interest in the subject of intuition and how it impacts people has grown in recent years,³² it is far from a new topic of study. In the fourth century B.C., Aristotle wrote about “knowledge that exists without proof,” which he identified as intuitive reasoning.³³ He posited that “unless some knowledge was known without proof, reasoning would involve an endless regress of proofs. Therefore, to begin deductive reasoning, an intuitively known truth or an inductive-empirical one is needed.”³⁴ Aristotle believed that “[s]uch intuitively known truths rank above even the universals of science and are . . . indispensable for scientific inquiry.”³⁵ Thus, he wrote, “[s]cientific knowledge and intuition are . . . always true. Furthermore, no other kind of thought except intuition is more accurate than scientific knowledge.”³⁶ Grounded in this understanding of intuitive reasoning, “the Aristotelian concept of judgment is a matter of ‘character and feeling’ and ‘habits of the heart,’ in which we learn by ‘imitation of models . . . habituation and . . . the acquisition of appropriate feelings that precede reason.”³⁷

Defined broadly, intuition is a way of knowing without using rational processes.³⁸ It has been distinguished from rationalism and logic as “mental manipulation of affective data . . . —like the crying child and quivering voice— [that] stimulate complex psychological (and occasionally physiological) reactions in people, but do not so inspire machines.”³⁹ Carl Jung defined intuition “as a function that transmits perceptions meaningfully but unconsciously.”⁴⁰

According to Malcolm Gladwell’s book *Blink: The Power of Thinking Without Thinking*, far from being a new-age fad, intuition is a critical skill that can be learned and honed, allowing us to create and communicate without relying on extensive data.⁴¹ This process of intuitive reasoning is both lightning-

³² See, e.g., Malewska, *supra* note 17, at 31; Galang Lufityanto et al., *Measuring Intuition: Nonconscious Emotional Information Boosts Decision Accuracy and Confidence*, 27 PSYCH. SCI. 622, 622 (2016) (explaining that intuition has attracted both academic and popular attention, including in the applied sciences).

³³ NODDINGS & SHORE, *supra* note 4, at 7.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* (author’s translation) (quoting ARISTOTLE, POSTERIOR ANALYTICS bk. II, at 100b (c. 384 B.C.E.)).

³⁷ Alice Woolley, *Intuition and Theory in Legal Ethics Teaching*, 9 U. ST. THOMAS L.J. 286, 307 (2011) (quoting David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 59, 63 (1995)).

³⁸ See Suzanne B. Goldberg, *Sticky Intuitions and the Future of Sexual Orientation Discrimination*, 57 UCLA L. REV. 1375, 1380 (2010) (quoting THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 947 (3d ed. 1992)).

³⁹ Erin Ryan, *The Discourse Beneath: Emotional Epistemology in Legal Deliberation and Negotiation*, 10 HARV. NEGOT. L. REV. 231, 233 (2005) (footnotes omitted).

⁴⁰ NODDINGS & SHORE, *supra* note 4, at 25 (citing CARL GUSTAV JUNG, PSYCHOLOGICAL TYPES (H. Godwin Baynes trans., Harcourt Brace 1946) (1921)).

⁴¹ See Sandra Shutt, *Beyond Evidence: How Great Lawyers Leverage Intuition*, CANADIAN LAW. (Mar. 20, 2017), <https://www.canadianlawyermag.com/news/general/beyond-evidence-how-great-lawyers-leverage-intuition/270436> (describing Gladwell’s work on “rapid cognition”).

quick and unconscious, and it plays a key role in both human survival and human thriving.⁴²

B. BOTH INTUITIVE THINKING AND ANALYTICAL THINKING CONTRIBUTE SIGNIFICANTLY TO DECISION-MAKING AND JUDGMENT

Decision-making usually involves two modes of thought—intuitive thinking and a type of thinking that is termed analytical, logical, rational, or deliberate.⁴³ “A decision can be made rationally or intuitively, and information will oscillate between the two systems until a choice is made.”⁴⁴ When used in combination, a person engages in “holistic thinking.”⁴⁵

Intuitive and analytical thinking differ in significant ways and are suited to different situations. “Intuition is experience translated by expertise to produce rapid action.”⁴⁶ Among other characteristics, intuitive thinking is unfocused and nonlinear and incorporates a broader view of a problem or decision.⁴⁷ Intuitive thinking thrives in the places “where analytical thinking is inadequate: under time pressure [and] where conditions are dynamic.”⁴⁸ Intuition is most useful “where the observer has experience in the particular situation . . . and is prepared to act on feelings or hunches where explanations are either not required or there is no time for them.”⁴⁹

In contrast, analytical thinking “is focused, sharp, linear, deals with one thing at a time, contains time, is deconstructive, contains no perspective, is subject to disorientation, is brain centered, and tends to the abstract.”⁵⁰ In situations involving no time pressure and static conditions, analytical thinking offers

⁴² See GLADWELL, *supra* note 3, at 50.

⁴³ See Tara L. Queen & Thomas M. Hess, *Age Differences in the Effects of Conscious and Unconscious Thought in Decision Making*, 25 PSYCH. AGING. 251, 251–53 (2010); see also Carina Remmers et al., *Mindful(l) Intuition: Does Mindfulness Influence the Access to Intuitive Processes?*, 10 J. POSITIVE PSYCH. 282, 282 (2015) (observing that there are two systems of information processing: “the rational-analytic system and the intuitive-experiential system. Rational-analytic processes are deliberate, slow, and process information according to propositional rules in a sequential manner. In contrast, intuitive processes are fast, unconscious, associative, and influenced by affect.”).

⁴⁴ Simone Stevenson & Richard E. Hicks, *Trust Your Instincts: The Relationship Between Intuitive Decision Making and Happiness*, 12 EUR. J. SCI. RSCH. 463, 467 (2016) (first citing Cornelia Betsch & Justus J. Kunz, *Individual Strategy Preferences and Decisional Fit*, 21 J. BEHAV. DECISION MAKING, 532 (2008); and then citing Erik Dane et al., *When Should I Trust My Gut? Linking Domain Expertise to Intuitive Decision-Making Effectiveness*, 119 ORG. BEHAV. & HUM. DECISION PROCESSES 187 (2012)).

⁴⁵ Charles B. Parselle, *Analytical/Intuitive Thinking*, MEDIATE.COM (Nov. 7, 2005), <https://mediate.com/analytical-intuitive-thinking/>; see also Kutsch, *supra* note 18 (noting “that both systems usually operate when people think”).

⁴⁶ *Id.*

⁴⁷ See *id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Parselle, *supra* note 45.

advantages.⁵¹ For example, it works well when dealing with complex information and when there are specific criteria to be applied, such as rules of law.⁵² Analytical thinkers are better at metacognition and can more easily identify and “distinguish between deliberative and intuitive solutions.”⁵³

Because the two modes of thought often occur together, “[i]ntuition is not a negation of logical thinking[,] but it involves applying rules which are different from classical logical reasoning.”⁵⁴ In fact, the two modes of thinking are complementary elements of effective decision-making, where intuition allows one to synthesize many years of experience into rational knowledge.⁵⁵ Rational decision-making involves both intuition and emotion, as demonstrated in fields such as marketing and the law.⁵⁶ In the legal context, for example, “emotional details, such as remorse and victim impact[,] are regularly admitted in court because the law recognizes that they bear on a rational result.”⁵⁷

Because the two modes complement each other and work together, an analytical approach that ignores intuition is not only unrealistic and largely unattainable, but also incomplete.⁵⁸ In the context of judicial decision-making, legal scholars have argued that “a detached, objectivist stance enables judges to insulate themselves from moral intuitions or anxieties that might inform their decision[-]making process,”⁵⁹ while other scholars have recognized the role of

⁵¹ See Remmers et al., *supra* note 43, at 283 (citing Ap Dijksterhuis & Zeger Van Olden, *On the Benefits of Thinking Unconsciously: Unconscious Thought Can Increase Post-Choice Satisfaction*, 42 J. EXPERIMENTAL SOC. PSYCH. 627, 627–31 (2006)) (“Especially in situational contexts in which a person is under stress, time pressure, and when facing complex problems, intuitive processes often lead to judgments with higher diagnostic value for the to-be-judged criterion than rational-analytic processes of reasoning.”).

⁵² Parselle, *supra* note 45.

⁵³ Ruth Vance & Susan Stuart, *Of Moby Dick and Tartar Sauce: The Academically Underprepared Law Student and the Curse of Overconfidence*, 53 DUQ. L. REV. 133, 156–57 (2015) (citing André Mata et al., *The Metacognitive Advantage of Deliberative Thinkers: A Dual-Process Perspective on Overconfidence*, 105 J. PERSONALITY & SOC. PSYCH. 353, 369 (2013)).

⁵⁴ Malewska, *supra* note 17, at 33 (citing ROY ROWAN GOLDBERG, *THE INTUITIVE MANAGER* (1987)). *But see* Giulia Calabretta et al., *The Interplay Between Intuition and Rationality in Strategic Decision Making: A Paradox Perspective*, 38 ORG. STUD. 365, 366–67 (2016) (noting the tension between rational and intuitive thinking and concluding that “individuals can use both intuition and rationality, and frame their interplay as a sustainable and virtuous tension that can be managed through paradoxical thinking”).

⁵⁵ Malewska, *supra* note 17, at 33 (citation omitted); *see also* Sutton, *supra* note 24 (describing the “dual-process theory—decision-making processes split between intuitive (experiential or tacit) and analytical (rational or deliberate)”).

⁵⁶ *See* Alope Chakravarty, *Evolution of the Trial Advocate: From Quintilian to Quanta in the Contemporary Courtroom*, 45 SUFFOLK U. L. REV. 45, 58 (2017).

⁵⁷ *Id.*

⁵⁸ *See, e.g.*, Lizzie Swaby et al., *The Use of Cognitive Task Analysis in Clinical and Health Services Research—A Systematic Review*, 8 PILOT & FEASIBILITY STUD. 1, 1–2 (2022) (citing DANIEL KAHNEMAN, *ATTENTION AND EFFORT* 2–12 (1973)) (observing that “[p]eople have a limited capacity for processing information”); *see also* Vance & Stuart, *supra* note 53, at 157 (noting that intuitive thinkers who rely exclusively on their intuition can be unaware of analytical solutions to a problem).

⁵⁹ Kathryn Abrams & Hila Keren, *Who’s Afraid of Law and the Emotions?*, 94 MINN. L. REV. 1997,

intuition and emotion in judges' decisions.⁶⁰ In the case of moral judgments, social psychologist Jonathan Haidt writes that moral knowledge and judgments are reached primarily through intuition, not through reasoning and reflection.⁶¹

In everyday life, many people use intuitive reasoning but do not realize they are doing so.⁶² The “analytical” justifications people give for their moral judgments are, in fact, developed after the judgment itself is reached.⁶³ Thus, as demonstrated in social psychology research, people tend to perceive their moral reasoning as objective and analytical, even when it is not.⁶⁴ Haidt calls this the “*rationalist delusion*”—“[t]he belief in a reliable faculty of reasoning, capable of operating effectively and impartially even when self-interest, reputational concerns, and intergroup conflict pull toward a particular conclusion.”⁶⁵ Another scholar writes that “impartiality [is] virtually impossible for a situated human being to achieve; moreover, aspiring to a stance of detachment could produce a failure to take responsibility for the consequences of judicial action.”⁶⁶ Thus, intuitive reasoning plays a critical, but often overlooked, role in all decision-making, including judicial decisions.

C. INTUITIVE THINKING OFFERS PROFESSIONAL AND PERSONAL ADVANTAGES TO LAWYERS AND JUDGES

Lawyering often is perceived as a practice based largely or entirely on logic and rational analysis, devoid of emotion and intuition.⁶⁷ However, it is widely recognized that many legal and judicial decisions combine the intuitive with the analytical,⁶⁸ and scholarship on law and emotions argues that emotions serve a

2007 n.38 (2010) (first citing Martha Minow & Elizabeth V. Spelman, *Passion for Justice*, 10 CARDOZO L. REV. 37, 45 (1988); and then citing Judith Resnik, *On the Bias: Feminist Reconsiderations of the Aspirations for Our Judges*, 61 S. CAL. L. REV. 1877, 1882–84 (1988)).

⁶⁰ See, e.g., Terry A. Maroney, *The Emotionally Intelligent Judge: A New (and Realistic) Ideal*, 49 COURT REV. 100, 100 (2013) (“Judges have emotions, and emotions influence decision[-]making.”).

⁶¹ See Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCH. REV. 814, 814 (2001).

⁶² See Jonathan Haidt, *Moral Psychology and the Law: How Intuitions Drive Reasoning, Judgment, and the Search for Evidence*, 64 ALA. L. REV. 867, 868–70 (2013) (arguing that people develop intuitions first, followed by justifications of those intuitions using strategic reasoning).

⁶³ See Haidt, *supra* note 61, at 814–15, 822–23.

⁶⁴ See *id.* at 823.

⁶⁵ Haidt, *supra* note 62, at 867.

⁶⁶ Abrams & Keren, *supra* note 59, at 2007 (footnote omitted).

⁶⁷ Larry Richard, *The Lawyer Types*, 79 ABA J. 74, 76 (1993) (noting that, in one Meyers-Briggs analysis of lawyers, the majority were “intuitive type” rather than “sensing type”); see also David Malcolm Brown, *The Ethical Lawyer—Contradiction in Terms or Reality?*, 16 WM. MITCHELL L. REV. 1293, 1293 (1990) (“This idealized lawyer is emotionally removed from the judicial process, and thus able to utilize every ounce of intellect, legal skill, and talent to advocate for a client no matter what the ramifications to society.”).

⁶⁸ See, e.g., Paul H. Robinson & John M. Darley, *Intuitions of Justice: Implications for Criminal Law and Justice Policy*, 81 S. CAL. L. REV. 1, 3 (2007) (“[S]ocial science evidence suggests that judgments about justice, especially for violations that might be called the core of criminal wrongdoing, are more the product of intuition than reasoning.”); Tomasz J.G. Zygmunt, *An Intuitive*

critical and useful role in both legal thought and legal decision-making.⁶⁹ This scholarship has set out to “modify legal doctrine to acknowledge and encompass affective response [and] use law to channel, moderate, or foster the emotions.”⁷⁰ Although met with skepticism by some legal scholars, the intersection of emotion and law “has great pragmatic potential,”⁷¹ as will be further discussed later in this article.⁷²

In addition to the general benefits discussed above, intuition offers advantages to judges and lawyers in lawmaking and the practice of law. In exactly the types of situations that lawyers encounter frequently—situations “where decisions are more challenging, situations are more confusing and complex, information is scarce or inconclusive, time is short, and stakes are high”—analytical thinking falls flat and does not lead to better decisions or results.⁷³ Indeed, research has demonstrated that the use of analytical thinking in these types of high-stakes situations “results in worse decisions . . . [because] these methods seem to interfere with intuition.”⁷⁴ Thus, in the scenarios lawyers and judges confront on a regular basis, tapping into intuition leads to better outcomes.

1. Judicial Decision-Making Involves and Benefits from Intuitive Reasoning

The value of intuitive reasoning in judicial decision-making, according to scholar Linda L. Berger, lies not in its influence on a judge’s judgments, but in its influence on a judge’s problem-solving.⁷⁵ Professor Berger observes that judges solve problems by “finding, interpreting, applying, and making law”—and to do so, they must recognize “[v]isual and verbal cues point[ing] to similarities, unlocking patterns and unblocking paths.”⁷⁶ These cues help to “bring[]

Approach to Hard Cases, 16 *UTRECHT L. REV.* 21, 29–30 (2020); Robert Benjamin, *Gut Instinct: A Mediator Prepares*, *MEDIATE.COM* (Apr. 3, 2002); Mark C. Modak-Truran, *A Pragmatic Justification of the Judicial Hunch*, 35 *U. RICH. L. REV.* 55, 58–59 (2001) (noting that “the hunch theory of judicial decision-making presents a practical solution to the explosion of fact and the indeterminacy of the law”); Larry O. Natt Gantt, II, *Deconstructing Thinking Like a Lawyer: Analyzing the Cognitive Components of the Analytical Mind*, 29 *CAMPBELL L. REV.* 413, 481 n.3 (2007) (citing NORMAN BRAND & JOHN O. WHITE, *LEGAL WRITING: THE STRATEGY OF PERSUASION* 135, 140 (2d ed. 1988)) (observing, in the context of “thinking like a lawyer,” that some individuals rely on “informed intuition” to solve legal problems); Hutcheson, *supra* note 2, at 278; Linda L. Berger, *A Revised View of the Judicial Hunch*, 10 *LEGAL COMM. & RHETORIC: JALWD* 1, 1–4 (2013).

⁶⁹ See Abrams & Keren, *supra* note 59, at 2003.

⁷⁰ *Id.* at 1999–2000.

⁷¹ *Id.* at 2001–02.

⁷² See *infra* text accompanying notes 93–104.

⁷³ Eric Barker, *This Is How to Master Your Intuition: Four Research-Backed Secrets*, *OBSERVER* (Dec. 16, 2016, 2:02 PM), <https://perma.cc/4HS7-P64P> (citing KLEIN, *supra* note 18).

⁷⁴ *Id.* (quoting KLEIN, *supra* note 18) (noting that decision quality decreases “when people are instructed to use decision analysis” and when they “ignore intuition,” leading “those who do not or cannot trust their intuitions [to be] less effective decision makers”).

⁷⁵ See Berger, *supra* note 68, at 1, 6.

⁷⁶ *Id.* at 1.

to mind a series of potential answers that are ‘good enough’ for testing.”⁷⁷ This process of recognizing similar patterns and then using potential answers to test alternatives allows decision-makers to reach effective decisions.⁷⁸

Professor Berger points to several cases demonstrating the use of judicial intuition to recognize patterns. For example, she argues that Justice Antonin Scalia applied intuitive reasoning in *Michael H. v. Gerald D.*, in which the U.S. Supreme Court held that a birth or natural father had no protected constitutional interest in a relationship with his daughter.⁷⁹ She writes, “Once a cue existing within the situation prompted Justice Scalia’s intuition to recognize from his memory bank that this [family situation] was an *extraordinary* pattern . . . the conclusion that such a pattern could not constitute a family was easily reached.”⁸⁰ In the opinion, Justice Scalia failed to define a family or explain his reasoning that the situation was so extraordinary that it could not possibly constitute a family, leading Professor Berger to conclude that his thinking on the subject was intuitive and at least partly subconscious.⁸¹

While acknowledging that judges use intuitive reasoning in their decisions, Professor Berger cautions that making judgments about people or the future based on intuition—using “unconscious mental processes that affect perception, impressions, and judgment because of implicit memories, perceptions, attitudes, and stereotypes”—can lead to implicit bias.⁸² In this instance, intuition closes the mind.⁸³ In contrast, “when it comes to solving problems, intuition *opens* minds.”⁸⁴

While the legal system expects “neutral, careful decision[-]making” from judges,⁸⁵ it also recognizes that judges display emotions, including anger,⁸⁶ and make decisions based on intuitive reasoning. In fact, making subjective decisions based on intuition is at times *required* of a judge. For example, “[a] judge’s 403-balancing test is an intuitive exercise that is not rooted in science, but rather, is based on the judge’s subjective experiences and biases.”⁸⁷

In 1929, federal judge Joseph C. Hutcheson, Jr., wrote about his approach to hard cases:

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 3, 5.

⁷⁹ *See id.* at 26 (citing *Michael H. v. Gerald D.*, 491 U.S. 110 (1989)).

⁸⁰ Berger, *supra* note 68, at 27.

⁸¹ *See id.*

⁸² *See id.* at 9 (citing John F. Irwin & Daniel L. Real, *Unconscious Influences on Judicial Decision-Making: The Illusion of Objectivity*, 42 MCGEORGE L. REV. 1, 2 (2010)).

⁸³ *See id.* at 1 (“When judges are making *judgments* about people (he looks trustworthy) or the future (she will be the better parent), the critics are correct: [I]ntuition based on past experience may close minds.”).

⁸⁴ *Id.* at 5.

⁸⁵ *See* Terry A. Maroney, *Angry Judges*, 65 VANDERBILT L. REV. 1207, 1209 (2012).

⁸⁶ *See id.* (“Humans (including judges) feel anger when we perceive that a rational agent has committed an unwarranted wrongdoing; that experience of anger generates a desire to affix blame and assign punishment, and facilitates actions necessary to carry out that desire.”).

⁸⁷ Chakravarty, *supra* note 56, at 62 (citing FED. R. EVID. 403).

While when the case is difficult or involved, and turns upon a hairsbreadth of law or of fact . . . I, after canvassing all the available material at my command, and duly cogitating upon it, give my imagination play, and brooding over the cause, wait for the feeling, the hunch—that intuitive flash of understanding which makes the jump-spark connection between question and decision, and at the point where the path is darkest for the judicial feet, sheds its light along the way.⁸⁸

Acknowledging that “intuition has a bad reputation [especially when] compared with a judgment that comes from careful analysis of all the relevant factors and shows each inference drawn and traces the conclusion in a clear line to all of the antecedent conditions,”⁸⁹ Professor Berger argues that “such analytical processes are not the only, and sometimes not the best, sources for solving problems.”⁹⁰ By integrating intuitive reasoning based on years of experience with the analytical data presented, judges are better able to reach decisions in cases, particularly where the precedent and the “old rules” are “a poor fit.”⁹¹ The use of intuition offers “patterns and paths for exploration” that might not be initially obvious but that draw on judges’ previous experiences.⁹²

2. Intuitive Reasoning Contributes to Soft Skills and Emotional Intelligence

In recent decades, significant attention has focused on the development of law students’ and lawyers’ so-called “soft skills,”⁹³ and research has demonstrated the utility of emotional intelligence in various professional contexts.⁹⁴ Skills falling under the umbrella of both soft skills and emotional intelligence “include time management, interpersonal communication, self-awareness (recognizing how you feel and how you are coming across to others), motivation (striving to grow and finding meaning, interest, and passion in your life), and

⁸⁸ Hutcheson, *supra* note 2, at 278.

⁸⁹ Berger, *supra* note 68, at 39 (quoting GARY KLEIN, *SOURCES OF POWER: HOW PEOPLE MAKE DECISIONS* 34 (1998)).

⁹⁰ *See id.*

⁹¹ *See id.* at 2.

⁹² *See id.* at 3.

⁹³ *See, e.g.*, Susan S. Daicoff, *Teaching Relational Skills: The Evidence*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 314, 314–22 (Deborah Maranville et al. eds., 2015).

⁹⁴ *See* John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 326 (2008) (citing Chris Dulewicz et al., *The Relevance of Emotional Intelligence for Leadership Performance*, 30 J. GEN. MGMT. 71, 81–82 (2005)).

self-regulation (managing difficult emotions).”⁹⁵ Both soft skills and emotional intelligence can be taught and learned.⁹⁶

Notably, “[w]hile [analytical] skills are important, research suggests that it’s actually our soft skills and [emotional intelligence] that are bigger predictors of success in [the legal] profession.”⁹⁷ In the business field, research “suggest[s] that individuals with high emotional intelligence competencies, IQ being equal, have superior ability to persuade, influence, and communicate compared with individuals with less developed competencies.”⁹⁸

Intuition plays a critical role in self-awareness,⁹⁹ which is a key component in the development and execution of both soft skills and emotional intelligence. Because intuition helps individuals monitor and read the signals sent by their bodies, individuals with the ability to correctly interpret those signals demonstrate heightened self-awareness and higher emotional intelligence.¹⁰⁰ Self-awareness, in turn, leads to greater connection with one’s self, increased psychological well-being, self-regulation toward goals, and a sense of meaning in life.¹⁰¹ In contrast, the inability to read the body’s signals is connected with lower levels of emotional intelligence.¹⁰² Awareness of one’s emotions assists

⁹⁵ Sarah Myers, *Overcoming the Surprising Pitfalls of Intelligence*, COLO. LAW. 16 (July 2019), https://www.cobar.org/Portals/COBAR/TCL/2019/July/CL_July2019_Series.pdf; see also Christine Cerniglia, *Efficient Collaboration: How to Build Pathways Between Silos, Model Behavior Ideal for Professional Identity Formation, and Create Complex Experiential Modules All While Having Fun*, 1 J. EXPER. LEARNING 93, 97 (2015) (citing Neil Hamilton & Verna Monson, *Answering the Skeptics on Fostering Ethical Professional Formation (Professionalism)*, 20 PRO. LAW. 3, 9 (2011) (noting the importance of “self-awareness, self-reflection and learning from mistakes, integrity, honesty, empathy, trustworthiness, responsibility to serve others, inspirational vision and persuasion skills to gain others’ support”).

⁹⁶ See, e.g., Sophie M. Sparrow, *Teaching and Assessing Soft Skills*, 67 J. LEGAL EDUC. 553, 556 (2018); Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57, 60 (2012) (“[E]mpirical evidence supports the view that professionalism education in law school is not a waste of time and effort; a person’s character is molded and changed beyond the teenage formative years, based on one’s experience and reflection.”); Montgomery, *supra* note 94, at 326.

⁹⁷ Myers, *supra* note 95; see also Sparrow, *supra* note 96, at 554 (noting a study finding that “characteristics (such as integrity and trustworthiness, conscientiousness, and common sense), as well as professional competencies (such as listening attentively, speaking and writing, and arriving on time), were far more important in brand new lawyers than legal skills” (quoting Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (July 2016), https://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf)).

⁹⁸ Montgomery, *supra* note 94, at 326.

⁹⁹ See VAUGHAN, *supra* note 5, at 114 (“In other words, self-awareness is the ground from which intuition comes to full fruition.”).

¹⁰⁰ See *supra* text accompanying notes 26–31.

¹⁰¹ See Kristine Klussman et al., *The Importance of Awareness, Acceptance, and Alignment with the Self: A Framework for Understanding Self-Connection*, 18 EUR.’S J. PSYCH. 120, 124, 126 (2022) (citations omitted).

¹⁰² See Haden, *supra* note 26 (citing Jeremy A. Yip et al., *Follow Your Gut? Emotional Intelligence Moderates the Association Between Physiologically Measured Somatic Markers and Risk-Taking*, 20 EMOTION 462 (2020)).

with interpersonal communications and interactions, and this awareness lies at the heart of emotional intelligence.

Furthermore, intuition contributes to successful communication by focusing a speaker's attention on both her own needs and emotions and on the listener's needs and emotions. By "noticing feelings and making observations," speaker and listener can communicate with understanding and collaboration, and without emotional activation.¹⁰³ By accessing one's own internal dialogue, a person can approach others from a perspective of wisdom and clear-headedness, rather than thoughtless reaction.

As discussed in Part II of this article,¹⁰⁴ legal education's emphasis on analytical reasoning over intuition interferes with the development of both soft skills and emotional intelligence. Because these skills are so important to success as a lawyer, it is imperative that law schools address them in a meaningful, holistic way that not only allows but also encourages students to tap into their inner wisdom and emotional landscape to better develop the self-awareness that leads to more effective communication, more productive interpersonal relations, and a personal identity that is replete with authenticity and a powerful sense of meaning.

3. Intuitive Reasoning Improves Lawyering Skills, Including Prediction, Problem-Solving, Improvisation, and Client Counseling

Intuitive thinking can help lawyers use past experiences to make accurate predictions based on patterns.¹⁰⁵ Although the outcomes of situations or decisions "often depend on many variables outside of a lawyer's control, there is a distribution of probable outcomes for different situations that one can begin to recognize with enough time and practice."¹⁰⁶ For example, "[e]xpert lawyers often—but not always—can see the familiar in a new situation and react appropriately."¹⁰⁷ With experience, lawyers "accumulate 'numerous and generic' patterns that 'facilitate an effortless and instantaneous solution of a wide range of important problems.'"¹⁰⁸ Just as judges use intuition to inform their problem-solving,¹⁰⁹ lawyers' problem-solving also benefits from intuitive reasoning.¹¹⁰

¹⁰³ See OREN JAY SOFER, SAY WHAT YOU MEAN: A MINDFUL APPROACH TO NONVIOLENT COMMUNICATION 133 (2018).

¹⁰⁴ See *infra* text accompanying notes 156–97.

¹⁰⁵ See generally Stephen M. Maurer, "Beauty Is Truth and Truth Beauty": How Intuitive Insights Shape Legal Reasoning and the Rule of Law, 42 SEATTLE U. L. REV. 129 (2018) (explaining the positive impact intuitive thinking can have on the legal profession).

¹⁰⁶ DOUGLAS O. LINDER & NANCY LEVIT, THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW 137 (2013).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 138 (quoting ELKHONON GOLDBERG, THE WISDOM PARADOX: HOW YOUR MIND CAN GROW STRONGER AS YOUR BRAIN GROWS OLDER 154 (2006)).

¹⁰⁹ See *supra* text accompanying notes 75–84.

¹¹⁰ See Berger, *supra* note 68, at 24.

For example, so-called “hard cases” are those that are particularly complex or atypical.¹¹¹ The intuitive theory on “hard cases hypothesizes that lawyers’ and judges’ reasoning . . . relies heavily on their intuition” and that intuitive reasoning leads to the best decisions.¹¹² In this situation, intuitive analysis functions as a “database” that allows attorneys to construct effective arguments.¹¹³

As recognized by Judge Hutcheson, “intuition is essential for being able to improvise.”¹¹⁴ It tells us “*when* to adapt” and “*how* to adapt.”¹¹⁵ The alternative—specific, detailed plans set out in advance—leaves little room for the crucial ability to pivot when needed. “Our careful plans and procedures can crowd out intuition and discourage improvisation.”¹¹⁶ Plans can serve as blinders, “stifl[ing] adaptability” and preventing the planner from seeing other options. Thus, “anything irrelevant to the plan doesn’t get much attention.”¹¹⁷

Additionally, intuitive reasoning allows lawyers to respond appropriately to clients’ needs beyond a superficial level. For example, an experienced “lawyer can draw on patterns built over hundreds of hours with clients to intuitively respond appropriately to a client’s deep concerns—she knows when to soothe, when to warn, and when to focus attention on the problem at hand.”¹¹⁸ Attorney and longtime mediator Robert Benjamin notes that “[t]he best professional practitioners in any field, mediators included, come to appreciate the value of ‘tacit knowing,’ hunches and intuitive understanding.”¹¹⁹ By tapping into their intuitive reasoning, lawyers offer representation that is more holistic and responsive.

Finally, intuitive reasoning holds particular value in situations that are time-sensitive and uncertain. In the area of business management, a field where professionals “are forced to act and make decisions in complex, sometimes even extreme, environments,” research on intuition has demonstrated its prevalence and utility.¹²⁰ In situations where the time to make a decision is limited, “intuition plays a particularly important role as it triggers some not entirely conscious processes in the minds of decision makers.”¹²¹ Studies of business professionals have found that almost all rely on intuition, in addition to rational thinking, and upper-level managers rely more heavily on intuition than their lower-level colleagues.¹²² Notably, both lawyers and intuitive business decision-makers

¹¹¹ See Zygmunt, *supra* note 68, at 27.

¹¹² *Id.* at 29, 37.

¹¹³ *Id.* at 22.

¹¹⁴ KLEIN, *supra* note 18, at 173; *see also* Hutcheson, *supra* note 2, at 278.

¹¹⁵ KLEIN, *supra* note 18, at 173.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ LINDER & LEVIT, *supra* note 106, at 137.

¹¹⁹ Benjamin, *supra* note 68.

¹²⁰ Malewska, *supra* note 17, at 31.

¹²¹ *Id.* at 31–32.

¹²² See Kutsch, *supra* note 18; *see also* Barker, *supra* note 73 (“[I]f you’re good at what you do, you should be relying on intuition more, not less. Leveraging intuition isn’t lazy—it’s the hallmark of experts.”); *see also* Remmers et al., *supra* note 43, at 283 (observing that “skilled decision-makers often rely on their tacit knowledge”); *see also* Sutton, *supra* note 24 (citing Modesto A. Maidique,

operate in situations often featuring “dynamic changes occurring in the environment; excess or lack of information; the necessity to make decisions in conditions characterised by risk and uncertainty; time pressure; and intense competition.”¹²³ As demonstrated in the business context, intuitive reasoning is particularly critical in these situations.

Because law practitioners face many of the same challenges encountered regularly by other professionals—including risk, uncertainty, time pressure, and competition¹²⁴—harnessing the power of intuition, which is so valued in the business context, offers lawyers a more holistic, effective practice model.

4. Intuition Is Closely Linked to Ethics

Both intuition and emotion play an important role in making ethical decisions. When emotions “rise[] to the level of consciousness,” they can help to inform decision-making, including ethical decisions.¹²⁵ Emotions play a key role in intuitive analysis because “[e]motional associations from prior experiences result in how one feels about an event, object or person[] (positively or negatively) and that feeling is used directly as information in coming to a judgment.”¹²⁶ For example, a particular decision might inspire a feeling of “excitement and harmony” or “dread,”¹²⁷ both of which offer information to the decision-maker about potential options. Functional magnetic resonance imaging (fMRI) research has revealed that the “portions of the brain associated with emotional processes activate[] during ethical decisions, suggesting that emotion might play a significant role in ethical decision-making.”¹²⁸ Indeed, “[r]ecent research has criticized the . . . assumption of rationality in the ethical business decision-making literature stream for not taking into account the important role of affect and intuition in the decision-making process.”¹²⁹

Decoding Intuition for More Effective Decision-Making, HARV. BUS. REV. (Aug. 15, 2011), <https://hbr.org/2011/08/decoding-intuition-for-more-ef> (“Out of a sample of 36 CEOs, 85% confirmed that intuition . . . was central to their decision-making process.”).

¹²³ Malewska, *supra* note 17, at 35.

¹²⁴ *See id.*

¹²⁵ *See* James R. Guzak, *The Role of Intuition in Ethical Decision Making* 33 (Aug. 2009) (Ph.D. dissertation, University of Texas at Arlington).

¹²⁶ *Id.* (first citing G.L. Clore et al., *Affective Feelings as Feedback: Some Cognitive Consequences*, in *THEORIES OF MOOD AND COGNITION: A USER’S HANDBOOK* 27–62 (L.L. Martin & G.L. Clore eds., 2001); and then citing K. Daniels, *Affect and Information Processing*, in *THE OXFORD HANDBOOK OF ORGANIZATIONAL DECISION MAKING* 325–41 (G.P. Hodgkinson & W.H. Starbuck eds., 2008)).

¹²⁷ *Id.* at 38 (first citing Weston H. Agor, *The Logic of Intuition: How Top Executives Make Important Decisions*, 14 *ORG. DYNAMICS* 5, 5–18 (1986); and then citing Paul Slovic & Ellen Peters, *Risk Perception and Affect*, 15 *CURRENT DIRECTIONS PSYCH. SCI.* 322, 322–25 (2006)).

¹²⁸ *Id.* at 31 (citing J.D. Greene et al., *An fMRI Investigation of Emotional Engagement in Moral Judgment*, 293 *SCI. 2105*, 2105–08 (2001)).

¹²⁹ James R. Guzak & M. Blake Hargrove, *The Role of Intuition in Ethical Decision Making*, in *HANDBOOK OF INTUITION RESEARCH* 97, 98 (Marta Sinclair ed., 2011) (first citing Alicia E. Vélez García & Feggy Ostrosky-Solís, *From Morality to Moral Emotions*, 41 *INT’L J. PSYCH.* 348, 348–54 (2006); then citing Haidt, *supra* note 61, at 814–34; then citing Scott J. Reynolds, *A*

Legal ethics is “the exercise of professional judgment,”¹³⁰ and “professional judgment is ‘neither a matter of simply applying general rules to particular cases nor a matter of mere intuition’ but a process of bringing coherence to conflicting values within the framework of general rules and with sensitivity to highly contextualized facts and circumstances.”¹³¹ Legal ethics scholar Alice Woolley writes that “to make moral decisions[,] people need to know when a moral problem has arisen and to have the judgment to know what to do about it.”¹³² Noting that reasoning through ethical problems is a skill that can be learned over time, she writes, “Moral decision making relies significantly on our intuition and moral emotions, the unconscious cognitive processes through which we perceive and respond to moral problems. . . . Knowing what to do in any particular case is not normally the direct product of an ex ante reasoned analysis.”¹³³

Lawyers must recognize and build on their “rapid cognition”¹³⁴ in order to reach appropriate solutions to ethical dilemmas. Every individual has an internal ethical code based on a lifetime of experiences.¹³⁵ While these “ethical guidelines are within every single individual human being[,] . . . not every individual is able to access this ‘inner strength’”¹³⁶ By honing and practicing intuitive reasoning, lawyers are better able to access their own ethical code and use it to inform their work.

Lawyers make many decisions about ethics in the moment,¹³⁷ following a subconscious “four-step framework for considering a moral decision: (1) awareness of the ethical issue, (2) reasoning and arriving at a judgment regarding the issue, (3) experiencing a motivating emotion, and (4) behaving in accordance

Neurocognitive Model of the Ethical Decision-Making Process: Implications for Study and Practice, 91 J. APPLIED PSYCH. 737, 737–48 (2006); then citing Lisa Sayegh et al., *Managerial Decision-Making Under Crisis: The Role of Emotion in an Intuitive Decision Process*, 14 HUM. RES. MGMT. REV. 179, 179–200 (2004); and then citing Scott Sonenshein, *The Role of Construction, Intuition, and Justification in Responding to Ethical Issues at Work: The Sensemaking-Intuition Model*, 32 ACAD. MGMT. REV. 1022, 1022–40 (2007)).

¹³⁰ Katherine R. Kruse, *Professional Role and Professional Judgment: Theory and Practice in Legal Ethics*, 9 U. ST. THOMAS L.J. 250, 250 (2011).

¹³¹ *Id.* (quoting Gerald J. Postema, *Moral Responsibility in Legal Ethics*, 55 N.Y.U. L. REV. 63, 68 (1980)).

¹³² Woolley, *supra* note 37, at 289.

¹³³ *Id.* at 290.

¹³⁴ See GLADWELL, *supra* note 3, at 51.

¹³⁵ Brown, *supra* note 67, at 1295.

¹³⁶ *Id.*

¹³⁷ See Catherine Gage O’Grady, *Behavioral Legal Ethics, Decision Making, and the New Attorney’s Unique Professional Perspective*, 15 NEV. L.J. 671, 672 (2015); see also *id.* at 687 (noting that “new attorneys as a group are frequently busy, stressed, confused, and overloaded, which may lead them to miss moral aspects of a situation, select an ethically risky environment, and take the easiest path in ethical decision[-]making”).

with that intention.”¹³⁸ Although expressed in four numerical steps, people experience these elements simultaneously.¹³⁹

Typically, “ethical decisions are made quickly and intuitively”; analytical reasoning is “employed only later in the process—not to frame or help decide the moral question, but to justify a conclusion already made.”¹⁴⁰ A drawback of this approach is that those employing only intuitive reasoning—particularly those with more experience in their professional field—often “make rapid decisions, with little or no moral component, based on learned business schemas and intuition.”¹⁴¹ These experienced decision-makers may miss the ethical question altogether because they “may place arbitrary boundaries around a problem’s initial definition without pausing to include or even recognize ethical considerations when framing the problem.”¹⁴² Their intuitive focus on business-related interests sometimes means that an ethical dilemma fades into the background.¹⁴³ A lawyer in this position needs to “think broadly and ethically when framing issues.”¹⁴⁴

By listening to their intuitions, lawyers improve their ability to both recognize ethical dilemmas and respond appropriately, based on their experience and knowledge. However, lawyers must consider the broader scheme of potential ethical issues within any situation, taking care not to use intuition to narrow the focus to avoid issues in need of exploration.

5. Intuitive Thinking May Lead to Increased Happiness

Finally, “intuitive thinking has a strong positive correlation with happiness.”¹⁴⁵ The use of intuition is linked with an increase in a positive mood, while “reduced intuitive processing and increasing reliance on rationality” are linked with a negative mood.¹⁴⁶ Given the pervasive rates of anxiety, depression, and other mental health issues among law students and lawyers,¹⁴⁷

¹³⁸ *Id.* at 676 (citing Milton C. Regan, Jr., *Moral Intuitions and Organizational Culture*, 51 ST. LOUIS U. L.J. 941, 952 (2007); Linda K. Treviño et al., *Behavioral Ethics in Organizations: A Review*, 32 J. MGMT. 951, 960 (2006); JAMES REST ET AL., POSTCONVENTIONAL MORAL THINKING: A NEO-KOHLBERGIAN APPROACH 100–03 (1999)).

¹³⁹ *See id.* (citing MAX H. BAZERMAN & ANN E. TENBRUNSEL, BLIND SPOTS: WHY WE FAIL TO DO WHAT’S RIGHT AND WHAT TO DO ABOUT IT 29 (2011)).

¹⁴⁰ *Id.* at 677 (first citing Haidt, *supra* note 61, at 814, 823; then citing Robert A. Prentice, *Moral Equilibrium: Stock Brokers and the Limits of Disclosure*, 2011 WIS. L. REV. 1059, 1090; and then citing Regan, *supra* note 138, at 959–60).

¹⁴¹ *Id.* at 690.

¹⁴² *Id.*

¹⁴³ O’Grady, *supra* note 137, at 691.

¹⁴⁴ *Id.*

¹⁴⁵ Stevenson & Hicks, *supra* note 44, at 463.

¹⁴⁶ Guzak, *supra* note 125, at 38–39 (citations omitted).

¹⁴⁷ *See, e.g.*, Jarrod F. Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 VILL. L. REV. 361, 367–68 (2020) (citing G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT’L J.L. & PSYCHIATRY 233, 235–36 (1990)) (reviewing a study that concluded that “law students and lawyers suffered from depression at a rate twice to four times what

prioritizing well-being and happiness is critical to not only individual wellness, but also to the sustainability and health of the profession overall. Research has “found that happier people [are] more likely to base decisions upon intuitive decisional style [because] these individuals [are] more comfortable trusting their feelings than rational decision makers.”¹⁴⁸ In addition, “intuitive thinking is positively correlated with high relationship satisfaction, popularity, creativity, imagination and empathy.”¹⁴⁹

One study found that “decisional fit”—employing one’s preferred method of decision-making—was an important indicator of happiness; in other words, someone who favored rational thinking would not be happier applying intuitive thinking and vice versa.¹⁵⁰ Because of decisional fit, intuitive thinkers who attend law school and are forced to engage in rational thinking are likely to be unhappy.¹⁵¹ About a third of the general population prefers intuitive thinking, so “the rational style of decision[-]making would induce decisional misfit for intuitive thinkers[] and correlate with a reduction in subjective happiness appraisal.”¹⁵²

In addition, the internal focus that intuitive reasoning demands contributes to a greater sense of meaning and purpose for individuals. In the context of ethical decision-making, one author writes that “we must search inside ourselves not only for the sake of society as a whole, but also for our own survival and happiness as professionals. In order for us to effectively ‘do good,’ we must first be at peace with ourselves.”¹⁵³

Furthermore, “rational decision[-]making has . . . been linked with procrastination, higher stress, anxiety[,] and depression, where for some individuals the search for the most factual and logically correct answer can induce negative

would be expected in the general population”).

¹⁴⁸ Stevenson & Hicks, *supra* note 44, at 476 (citing Marieke de Vries et al., *Fitting Decisions: Mood and Intuitive Versus Deliberative Decision Strategies*, 22 COGNITION & EMOTION 931, 931–32 (2008)).

¹⁴⁹ *Id.* at 467 (citing Paul Norris & Seymour Epstein, *An Experiential Thinking Style: Its Facets and Relations with Objective and Subjective Criterion Measures*, 79 J. PERSONALITY 1043, 1043–80 (2011)).

¹⁵⁰ *See id.* at 477–78.

¹⁵¹ *See* Susan S. Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1350 (citing Barbara Nachmann, *Childhood Experience and Vocational Choice in Law, Dentistry, and Social Work*, 7 J. COUNS. PSYCH. 243, 244 (1960)) (noting that many law students choose the legal field because of its focus on logic and rational thought and reviewing one study finding that “authoritarian male dominance, self-discipline, school achievement, and reading were emphasized in law students’ early childhood, while emotions and concern for others’ feelings were de-emphasized”).

¹⁵² Stevenson & Hicks, *supra* note 44, at 478 (first citing Betsch & Kunz, *supra* note 44, at 532–35; then citing Yan Leykin & Robert J. DeRubeis, *Decision-Making Styles and Depressive Symptomatology: Development of the Decision Styles Questionnaire*, 5 JUDGMENT & DECISION MAKING 506, 506–15 (2010); and then citing Marta Sinclair & Neal M. Ashkanasy, *Intuition: Myth or a Decision-Making Tool?*, 36 MGMT. LEARNING 353, 353–70 (2005)) (noting that one-third prefer rational thinking and one-third prefer a mix of both).

¹⁵³ *See* Brown, *supra* note 67, at 1298.

affective states.”¹⁵⁴ On the other hand, in the context of happiness and life satisfaction, intuitive thinking is not without its own downsides and can be associated with impulsiveness or superstitious thinking.¹⁵⁵

A law school curriculum and culture that embrace and teach the different types of thinking—intuitive, rational, and holistic—may offer benefits to future lawyers in terms of happiness and well-being, and the three or four years of law school is an ideal time to help students develop and hone their intuitive thinking skills.

II. DESPITE THE EVOLUTIONARY AND MODERN-DAY BENEFITS OF USING ONE’S INTUITION, BOTH WESTERN CULTURE AND LEGAL CULTURE MINIMIZE INTUITIVE THINKING

In some cultures, educators, parents, and others teach from an early age that answers come from rational thought, logic, and science.¹⁵⁶ While of course it is true that important questions can be answered through these means, it is also true that not all questions can be so answered. In Western culture, “[w]e are taught from a young age to try to be reasonable, logical, and consistent, to avoid emotional, irrational behavior, and to suppress our feelings.”¹⁵⁷ Buoyed by a fear of emotions—thought to be “foolish, weak, and bothersome”¹⁵⁸—such teaching denies “our natural intuitive sense, which is meant to be a primary guiding force in our lives.”¹⁵⁹

Similarly, legal education reinforces a fear of emotion and reverence for data-based analysis among law students, who are indoctrinated into a culture that prioritizes external feedback over internal focus, ignores the emotional dimensions of the law, and minimizes or dismisses intuitive reasoning. By ignoring this tool, law schools deprive students of the benefits and advantages of intuitive reasoning.

¹⁵⁴ See Stevenson & Hicks, *supra* note 44, at 467 (first citing David M. Buss, *The Evolution of Happiness*, 55 AM. PSYCH. 15, 15–23 (2000); and then citing Leykin & DeRubeis, *supra* note 152, at 506–15).

¹⁵⁵ See Stevenson & Hicks, *supra* note 44, at 467 (citing Daniel Freeman et al., *Gut Feelings, Deliberative Thought, and Paranoid Ideation: A Study of Experiential and Rational Reasoning*, 197 PSYCHIATRY RSCH. 119, 119–22 (2012)).

¹⁵⁶ See, e.g., Ara Norenzayan et al., *Cultural Preferences for Formal Versus Intuitive Reasoning*, 26 COGNITIVE SCI. 653, 653, 679 (2002) (citations omitted) (finding that East Asian students relied on intuition more than European Americans and observing that “pedagogical practices emphasizing critical thinking in Western classrooms, as opposed to experience-based learning in Chinese classrooms[,] appear to encourage differing modes of thinking in Western and East Asian societies”); SHAKTI GAWAIN, *LIVING IN THE LIGHT* 38 (rev. ed. 1998).

¹⁵⁷ GAWAIN, *supra* note 156, at 38; see also *id.* at 39 (observing that some cultures encourage the development and expression of intuition, including Native American and African communities); see also Norenzayan, *supra* note 156, at 679 (observing that “the practice of adversarial debate prevalent in Western cultures, as opposed to the practice of consensus-based decision[-]making prevalent in East Asia[, has] been linked to analytic versus holistic cognitive orientations, respectively”).

¹⁵⁸ GAWAIN, *supra* note 156, at 38.

¹⁵⁹ *Id.* at 39; see also Haidt, *supra* note 61, at 1026 (discussing the “worship of reason” over emotion).

Notably, although intuition is accessible to all humans, it is traditionally associated more with women than with men.¹⁶⁰ This association stems in part from research demonstrating that women are better than men at interpreting facial expressions, emotions, and other nonverbal communication,¹⁶¹ and it helps to explain why legal education and the legal field tend to subordinate intuitive thinking. As observed by feminist scholars, “[g]iven that women were long excluded from the practice of law, it should not be surprising that the traits associated with women are not greatly valued by law.”¹⁶² Because both U.S. culture and legal education have been dominated by men, traits associated with women, such as intuition and emotion, often have been afforded a lesser status.

A. WESTERN CULTURE EMPHASIZES ANALYTICAL THINKING OVER INTUITIVE REASONING

Living in a culture that elevates logic and data over intuition and emotion leads to suspicion of rapid cognition:

We live in a world that assumes that the quality of a decision is directly related to the time and effort that went into making it. When doctors are faced with a difficult diagnosis, they order more tests, and when we are uncertain about what we hear, we ask for a second opinion.¹⁶³

Because “gathering as much information as possible and spending as much time as possible in deliberation” are prized above all else, “[w]e really only trust conscious decision making.”¹⁶⁴ Author Malcolm Gladwell has written, “Our world requires that decisions be sourced and footnoted, and if we say *how* we feel, we must also be prepared to elaborate on *why* we feel that way.”¹⁶⁵

Individuals typically prefer either analytical or intuitive reasoning, but they may ignore this preference due to cultural influences.¹⁶⁶ This is so because

¹⁶⁰ See, e.g., Wei Bao et al., *Women Rely on “Gut Feeling”? The Neural Pattern of Gender Difference in Non-Mathematic Intuition*, 196 PERSONALITY & INDIVIDUAL DIFFERENCES (2022).

¹⁶¹ See, e.g., Jessica K. Hall et al., *Sex Differences in Scanning Faces: Does Attention to the Eyes Explain Female Superiority in Facial Expression Recognition?*, 24 COGNITION & EMOTION 629 (2010); John Shen & Laurent Itti, *Top-Down Influences on Visual Attention During Listening Are Modulated by Observer Sex*, 65 VISION RSCH. 62 (2012); see also Adi Lausen & Annkathrin Schacht, *Gender Differences in the Recognition of Vocal Emotions*, 9 FRONTIERS PSYCH. 882 (2018).

¹⁶² Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women’s Lawyering Process*, 1 BERKELEY WOMEN’S L.J. 39, 44 (2013) (quoting FRANCES OLSEN, *THE SEX OF LAW* (unpublished manuscript)).

¹⁶³ GLADWELL, *supra* note 3, at 13; see also Balazs Aczel et al., *Unconscious Intuition or Conscious Analysis? Critical Questions for the Deliberation-Without-Attention Paradigm*, 6 JUDGMENT & DECISION MAKING 351, 351 (citing Asher Koriat et al., *Reasons for Confidence*, 6 J. EXPERIMENTAL PSYCH.: HUM. LEARNING & MEMORY 107, 107–18 (1980)) (noting the “traditional assumption that reasoning and analysis always lead to better outcomes”).

¹⁶⁴ GLADWELL, *supra* note 3, at 13–14.

¹⁶⁵ *Id.* at 52.

¹⁶⁶ Stevenson & Hicks, *supra* note 44, at 465, 467 (first citing Cornelia Betsch, *Preference for Intuition and Deliberation (PID): An Inventory for Assessing Affect- and Cognition-Based Decision-*

one's culture and conditioning impact one's choice of which type of reasoning to apply, and "[i]n societies where learning is based upon memorization of facts and tests of competence are designed and measured on evidence[-]based responding, children grow up classically conditioned to be able to justify a logical explanation for behaviour and thought."¹⁶⁷ In such societies, intuitive responses "are labelled flaky and inadequate as a justification for thought or behavior as they do not follow the display rules of formal logic."¹⁶⁸ When a choice is based on intuition rather than logic, there is sometimes a stigma associated with the process that led to the choice.¹⁶⁹

In the legal context, the rationalist delusion¹⁷⁰ reinforces the idea that lawyers base their decisions solely on analytical reasoning when, in fact, they are frequently using intuitive reasoning or a combination of both types instead. Additionally, because "[t]here is evidence . . . that moral judgment works like other kinds of judgment, in which most of the action is in the intuitive process," lawyers likely use intuitive reasoning more often and in more situations than they realize.¹⁷¹ This ignorance allows lawyers and law schools to perpetuate the myth that legal reasoning and decision-making are solely rational, analytical modes of thought without having to acknowledge the truth that both emotion and intuition are also important in the legal field.

B. LAW SCHOOL DISCOURAGES THE DEVELOPMENT OF INTUITION AND INTUITIVE REASONING

The experience of attending law school changes students.¹⁷² Law students become "less philosophical and introspective[;] less interested in abstractions, ideas, and the scientific method[;] less dominant, confident, and sociable[;] and more anxious and internally conflicted."¹⁷³ Over the course of several years, aspiring lawyers lose at least some of the idealism that drew them to law school in the first place; for example, most of those who began law school interested in pursuing a career in social justice resign themselves to working for a traditional law firm.¹⁷⁴ In one study of law students, "[t]he data reveal[ed] additional

Making, 25 ZEITSCHRIFT FÜR DIFFERENTIELLE UND DIAGNOSTISCHE PSYCHOLOGIE 179, 179–97 (2004); and then citing DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011)).

¹⁶⁷ *Id.* (first citing Norris & Epstein, *supra* note 149, at 1043–80; and then citing Ruth M. Sladek et al., *Age and Gender Differences in Preferences for Rational and Experiential Thinking*, 49 PERSONALITY & INDIVIDUAL DIFFERENCES 907, 907–11 (2010)).

¹⁶⁸ *Id.* at 465–66 (first citing de Vries et al., *supra* note 148, at 931–43; then citing Sayegh et al., *supra* note 129, at 179–99; and then citing Sinclair & Ashkanasy, *supra* note 152, at 353–70).

¹⁶⁹ *Id.* at 467 (citing Sinclair & Ashkanasy, *supra* note 152, at 353–70).

¹⁷⁰ See *supra* text accompanying notes 62–66.

¹⁷¹ Haidt, *supra* note 61, at 819.

¹⁷² See Daicoff, *supra* note 151, at 1388 (explaining that legal education causes personality changes due to high levels of tension and competition).

¹⁷³ *Id.* (citing James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 4 AM. BAR FOUND. RSCH. J. 791, 863–64 (1979)).

¹⁷⁴ See David W. Raack, *Law School and the Erosion of Student Idealism*, 41 J. LEGAL EDUC. 121,

changes that [were] very troubling, including an overall dulling of student motivation and goal-directed striving, and shifts away from initially positive motivation and altruistic values toward external, imposed values and motives.”¹⁷⁵

Scholars suggest several reasons for these changes. First, law schools tend to over-emphasize analytical reasoning at the expense of developing interpersonal skills.¹⁷⁶ The emphasis on analytical reasoning impacts law students and lawyers in multiple ways. As one example, it interferes with development of the “soft skills” that are recognized as essential to effective law practice.¹⁷⁷ Consequently, this “focus on analysis, though essential to the law school mission, can result in devaluation of the students’ more subjective and ‘non-rational’ qualities of feeling, value, intuition or character.”¹⁷⁸ As discussed above, soft skills are critical lawyering tools that are essential to competent, effective, and ethical law practice.¹⁷⁹

Second, law schools encourage students to seek satisfaction from external sources—such as grades, awards, and prestigious jobs—rather than from internal sources, such as a secure sense of self.¹⁸⁰ As a result, “feelings, values, intuition, and humility [are] the faculties most likely to be ignored by lawyers and law students.”¹⁸¹ Seeking satisfaction from external, rather than internal, sources can lead to unhappiness, dissatisfaction, and addiction.¹⁸² Professor Lawrence S. Krieger points out:

121 (1991) (reviewing ROBERT V. STOVER, *MAKING IT & BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL* (1989)); see also Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 592 (1982) (explaining that, while many law students go to law school with a socially constructive agenda, the framework of capitalism typically distorts this idea); see also Adrienne Stone, *The Public Interest and the Power of the Feminist Critique of Law School: Women’s Empowerment of Legal Education and Its Implications for the Fate of Public Interest Commitment*, 5 J. GENDER & L. 525, 525 (1997) (citing STOVER, *supra* note 174, at 3) (observing that “sociological research has demonstrated that students who enter law school with a commitment to a career working in the public interest tend not to follow through on that commitment”).

¹⁷⁵ Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 114 (2002).

¹⁷⁶ See 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, 10 (2002).

¹⁷⁷ See Ian Gallacher, *My Grandmother Was Mrs. Palsgraf: Ways to Rethink Legal Education to Help Students Become Lawyers, Rather Than Just Thinking Like Them*, 46 CAP. U. L. REV. 241, 257 (2018).

¹⁷⁸ Lawrence S. Krieger, *What We’re Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J.L. & HEALTH 1, 24 (1998–1999).

¹⁷⁹ See *supra* text accompanying notes 93–104.

¹⁸⁰ See Riskin, *supra* note 176, at 10; see also Krieger, *supra* note 178, at 18 (“We can begin to unify our understanding of the health, satisfaction, and professionalism problems of law students and lawyers by noting our pronounced tendency to focus on ‘externals’ (symbols) rather than ‘internals’ (one’s personal values, feelings, character, and conscience).”).

¹⁸¹ Krieger, *supra* note 178, at 34 n.138.

¹⁸² See Riskin, *supra* note 176, at 3 n.1 (“In their work, lawyers tend to look toward external sources of guidance, such as rules and standards articulated by various bodies. They also tend to look toward external sources for their own satisfaction.” (citing Krieger, *supra* note 178, at 18)); see also

[A] primary focus [on the external] obscures the value of one's innate human qualities and thereby undermines one's ability to experience genuine self-respect and respect for others. It is consequently common to find lawyers who excel in competition for the externals described, but who are tense, unpleasant, or highly dissatisfied with their lives—perhaps even depressed or struggling with addictions.¹⁸³

Legal education not only prioritizes the external over the internal, but also actively stifles students' intuitive reasoning. In a case study of law students, one student observed:

[Y]ou take what is intuitive and you destroy it. Everyone may understand something on an intuitive level, but you can somehow, by being persistent and by always bringing up these very strange examples or strange exceptions to the rule, you can take what was once understood on an intuitive level and make it suspect.¹⁸⁴

Another law student in the same study noted that most students adopt the majority view when it comes to legal thinking: "There is a small faction . . . that recognizes [and has] . . . managed to retain . . . individuality and a little bit of versatility in how they approach legal problems."¹⁸⁵ But overall, the majority view predominates, as communicated and reinforced by faculty, textbooks, other students, and legal academia in general.

Finally, legal education minimizes emotions and feelings, which play a role in accessing one's intuition.¹⁸⁶ This tradition started with Christopher Columbus Langdell, who treated law as a science and saw legal reasoning as a deductive process that led to right or wrong answers.¹⁸⁷ Langdell posited that emotions were irrelevant to both legal knowledge and learning the law, perhaps leading to a model of legal education that has been described as "profoundly alienating" to students.¹⁸⁸

Krieger, *supra* note 178, at 10 (citations omitted) (stating that "the high rate of addiction among lawyers, *by definition*, reflects a loss of connection with our feelings and inner sense of self"); *see also* Krieger, *supra* note 175, at 114 (observing that a change from internal focus to external focus leads to "decreases in future well-being and life satisfaction").

¹⁸³ Krieger, *supra* note 178, at 18–19.

¹⁸⁴ Kurt M. Saunders & Linda Levine, *Learning to Think Like A Lawyer*, 29 U.S.F. L. REV. 121, 144 (1994).

¹⁸⁵ *Id.* at 168 n.140.

¹⁸⁶ *See* Krieger, *supra* note 178, at 12 ("Law school seems to communicate to students that it is how you do, rather than who you are, that really matters."); *see also id.* at 11, 17 (stating that "[a] 'law-of-the-jungle' mentality is encouraged," and "the common culture of law school and law practice settings obscures the importance of decency—toward one's self as well as others—by overemphasizing competition, production, and accomplishment").

¹⁸⁷ *See* Angela P. Harris & Marjorie M. Shultz, "A(nother) Critique of Pure Reason": *Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1776 (1993) (explaining how Christopher Columbus Langdell viewed legal reasoning as a deductive process where answers were gathered from appellate judges' opinions).

¹⁸⁸ *See id.* at 1776 n.11 (citing 2 CHARLES WARREN, HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA 373 (1908) (observing that "[m]ost of the classes could see nothing in [Langdell's] system but mental confusion and social humiliation").

For several reasons, law students are taught to “separate emotions from the law.”¹⁸⁹ One theory proposes that “[k]nowing too much about the litigants in a case, after all, gets in the way of thinking about the legal implications of a case and prevents the students from ‘thinking like a lawyer.’”¹⁹⁰ Similarly, judges’ emotional detachment from their cases and decisions often is considered a necessity and viewed positively.¹⁹¹ In other words, some believe that competent legal analysis must be devoid of emotion.

In addition, avoiding an emotional connection with clients or issues benefits the capitalist economy. As one scholar notes, “[t]he economics of law practice also often motivate lawyers to advocate positions contrary to their conscience. The result is that many of us begin to compartmentalize, or even ignore, our own feelings and values concerning the issues we deal with for most of our waking hours.”¹⁹² While this approach benefits employers and the economy, it does so at the cost of “disconnect[ing] us from core sources of a profound sense of self.”¹⁹³

Research has demonstrated that law students show little interest in emotions or others’ feelings.¹⁹⁴ This aversion to emotions may lead to “substantial discomfort at the prospect of risking a human connection with people in pain or trying to respond constructively to the confusing and uncomfortable emotions

¹⁸⁹ See Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 371 (2016) (citing Lynette M. Parker, *Increasing Law Students’ Effectiveness When Representing Traumatized Clients: A Case Study of the Katherine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007)); see also Janeen Kerper, *Creative Problem Solving vs. the Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 353–54 (1998) (“The lawyer’s perceived role is to vindicate the client’s individual interests. Conflict is viewed as a zero-sum game with rights and liabilities, and winners and losers. Advocacy and assertiveness are seen as important skills. Emotion is consciously repressed in favor of a detached analysis.”).

¹⁹⁰ Gallacher, *supra* note 177, at 251 (quoting K.N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 101 (Oceana Publications 1960)).

¹⁹¹ See Abrams & Keren, *supra* note 59, at 2003–04 (“A detached, rationalist stance . . . served to insulate judges from pressure by the political branches or from undue sympathy with one or more of the parties.”); see also Resnik, *supra* note 59, at 1885 (“If freed from having to engage personally with what occurs subsequent to their judgements, judges may be enabled to impose rulings that would otherwise be too painful to pronounce.”).

¹⁹² Krieger, *supra* note 178, at 24–25; see also Julie D. Lawton, *Teaching Social Justice in Law Schools: Whose Morality Is It?*, 50 IND. L. REV. 813, 819 (2017).

Often, law school teaches a student that the ideal lawyer is one who is almost an agnostic—one who can argue both sides of a legal argument with equal skill and vigor regardless of the social justice implications. Arguably, adoption of this agnosticism allows law professors and students to avoid moral questions in the classroom. Law school, as currently structured, often trains students to separate their personal beliefs from their professional work or to sequester those personal beliefs into pro bono or community work separate from their main legal activities.

Id.

¹⁹³ Krieger, *supra* note 178, at 24–25.

¹⁹⁴ Nancy A. Welsh, *Looking Down the Road Less Traveled: Challenges to Persuading the Legal Profession to Define Problems More Humanistically*, 2008 J. DISP. RESOL. 45, 50 (2008) (citing LAWRENCE KRIEGER, *THE HIDDEN SOURCES OF LAW SCHOOL STRESS: AVOIDING THE MISTAKES THAT CREATE UNHAPPY AND UNPROFESSIONAL LAWYERS* 9–10 (2005)).

that are often part of litigation.”¹⁹⁵ One scholar notes that “[p]erhaps consistent with this aversion to focusing on emotions or feelings, law students also are much more likely than the general population to gather information and make decisions based on general standards or rules, rather than relational values.”¹⁹⁶

Given the importance of soft skills in many aspects of lawyering, including client counseling, a focus on data and rules to the exclusion of intuition and emotions renders lawyers less able to represent clients competently and ethically. On a personal level, the inability to recognize, accept, and demonstrate emotions has negative effects on mental health and well-being.¹⁹⁷

III. LEGAL EDUCATION SHOULD FOSTER INTUITION IN ORDER TO PREPARE STUDENTS FOR MORE SUCCESSFUL AND SATISFYING CAREERS

As an essential starting point to a discussion of teaching and supporting intuition in legal education, it is important to note that the ability to think intuitively can grow.¹⁹⁸ Furthermore, existing intuition can be encouraged and sharpened.¹⁹⁹ Indeed, “[m]ethods of cognitive task analysis have been developed for just this purpose.”²⁰⁰

As discussed above, law students tend to be more analytical and less emotional than others. “Without question, analytic types are attracted to the field and law school exaggerates the tendency to process everything intellectually.”²⁰¹ Thus, the path to supporting intuitive thinking may be more uphill among law students, but the rewards are numerous.

A. TALK ABOUT INTUITION AND EMOTIONS DIRECTLY

To encourage and nurture intuitive thinking, intuition should be a deliberate discussion topic in the classroom. Both faculty and students should “be encouraged to share information and experiences concerning intellectual intuitive activity[, and] . . . the historically documented quest for enhanced meaning [should] be openly discussed.”²⁰² In addition, the messy, emotional, and real-world aspects of law practice and legal cases should be explored as students

¹⁹⁵ *Id.* at 51.

¹⁹⁶ *Id.* at 50.

¹⁹⁷ See *The Science of Emotion: Exploring the Basics of Emotional Psychology*, UWA: PSYCH. & COUNSELING NEWS 14–16 (June 27, 2019), <https://online.uwa.edu/wp-content/uploads/2019/04/Science-of-Emotion-Guide-UWA.pdf>.

¹⁹⁸ See generally Kutsch, *supra* note 18 (implying that intuition can be developed and strengthened over time).

¹⁹⁹ See KLEIN, *supra* note 18, at 222 (noting that “there are ways to help people unpack their intuitions”).

²⁰⁰ *Id.*; see also *infra* text accompanying notes 249–54.

²⁰¹ David M. Zlotnick, *Integrating Mindfulness Theory and Practice into Trial Advocacy*, 61 J. LEGAL EDUC. 654, 658 (2012) (citing Richard, *supra* note 67, at 77–78).

²⁰² See NODDINGS & SHORE, *supra* note 4, at 96 (suggesting intuition and intuitive modes as topics of rational discussion in classrooms).

learn to be effective, ethical, and passionate practitioners.²⁰³ Introducing students to the historical and personal contexts and backstories of legal cases, as several textbooks do,²⁰⁴ is one way to shed light on the human stories underlying the law.

By acknowledging intuitive thinking and returning students' focus to the internal, faculty help to counteract the negative impact of law school on students' motivation and altruistic values.²⁰⁵ To help students, faculty should encourage "a free and rational interchange of information and speculation, [whereby] beliefs will come under scrutiny and feeling will be aroused."²⁰⁶ As a result of speaking directly about intuition in the classroom, students will have a greater opportunity to engage with the kinds of universal questions that humans have considered throughout history.²⁰⁷

However, discussing intuitive thinking in the classroom is distinguishable from both "emotional therapy" provided by faculty and the revelation of personal or emotional information by students.²⁰⁸ The goal is not to reveal personal details, but to mine inner resources and past experiences for valuable information that can be used to make decisions in the present. While "coercion from teacher or peers" harms development of intuitive reasoning, "encouragement, acceptance, and constructive evaluation enhance its achievement."²⁰⁹

Additionally, this article does not propose an exclusive focus on intuitive reasoning at the expense of analytical reasoning; both have a seat at the legal education table because both offer valuable insights. The reality is that present-day law school so overfocuses on the analytical—while pretending that the messiness of humanity with all its emotions and mistakes is antithetical to legal reasoning and law practice—that a new focus on intuitive reasoning would merely tip the scale away from the exclusive focus on rationality and logic toward a more holistic approach.

²⁰³ See Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 336 n.29 (1989) (citing Mark V. Tushnet, *Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 G. WASH. L. REV. 272, 276 (1984)) ("Abstracting law both from human events and from the emotional responses which those events should spark implicates serious political concerns.").

²⁰⁴ See, e.g., LINDA H. EDWARDS, *READINGS IN PERSUASION: BRIEFS THAT CHANGED THE WORLD* (2012); MYRIAM E. GILLES & RISA L. GOLUBOFF, *CIVIL RIGHTS STORIES* (2007).

²⁰⁵ See Krieger, *supra* note 175, at 114 ("The data reveal . . . an overall dulling of student motivation and goal-directed striving, and shifts away from initially positive motivation and altruistic values toward external, imposed values and motives.").

²⁰⁶ NODDINGS & SHORE, *supra* note 4, at 96.

²⁰⁷ See *id.*

²⁰⁸ See *id.*

²⁰⁹ *Id.* at 125.

B. TEACH IN A WAY THAT RESPECTS STUDENTS' INNER WISDOM

Faculty can also support students' intuitive development by providing a supportive space where students are free to make mistakes and share their thoughts without fear of shame or embarrassment. Intuition involves risks because it involves injecting one's strongly held feelings into the public domain and potentially learning that "[w]hat is felt with such certainty may turn out to be wrong."²¹⁰ Critically, "the intuition must be respected as a source of knowledge and insight into an aesthetic, historical, or social problem, while allowing for the possibility that another solution (perhaps not intuitive in origin) may prove just as effective or more accurate."²¹¹

Teaching in a way that respects and supports students' intuition is consistent with best practices in legal education. In fact, the case method was designed to "place the focus on students as learners and thinkers at the center of the classroom, rather than on the professor as fount of knowledge informing students of the law."²¹² Theoretically, then, the case method can support students' intuitive development by inviting their personal observations and emotional responses, as well as exploring whether a particular case reaches a non-intuitive resolution. As commonly executed, however, the case method does not necessarily encourage intuitive thinking and may, in fact, diminish students' attempts to incorporate their emotions and inner wisdom into their classwork.²¹³ Because the case method typically involves the study of decisions of appellate courts—prized for their dispassionate view of cases, removed from the passion, conflict, and "pathology of failed ventures" of trial—the professors and students working with these cases often also adopt a dispassionate view of the law.²¹⁴ Indeed, those working closely with appellate cases "inevitably move away from everyday life—away from detail, away from context, and away from passion."²¹⁵

The Socratic Method presents challenges, as well. Professor Gerald López has observed that, in a large classroom, "the Socratic method looks suspiciously like a set of mini-lectures by the teacher interrupted by questions that by now no one really expects to precipitate the kind of critical conversation among students and teacher that many imagine to be the defining strength of legal

²¹⁰ *Id.* at 125–26.

²¹¹ *Id.* at 126.

²¹² Jennie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2324 (2017).

²¹³ See López, *supra* note 203, at 336, 339 (noting that "curiosity about the messy, insoluble by-products of relationships seems only to get in the way of the studied effort to replicate what those in law prize as the highest form of legal reasoning"); see also Kerper, *supra* note 189, at 353–54.

²¹⁴ See López, *supra* note 203, at 336.

In the legal culture[,] the appellate court's distance from the heart of the conflict . . . is hailed as a distinctive virtue—indeed as a principal source of a judge's authority and the legal system's legitimacy. Qualities obviously so highly valued in appellate legal decision-making tend to rub off on both those who teach through and those who learn from appellate cases

Id.

²¹⁵ *Id.*

education.”²¹⁶ By teaching that there is only one answer to a legal question, known by the professor and to be discovered by the student, faculty undercut students’ intuition and present a vision of the law that is devoid of the “messy realities” of real life.²¹⁷ However, faculty do not have to abandon the Socratic Method:

Teachers using the Socratic method can do so without conveying that there is only one right answer, known to the teacher and to be discovered by the student. More generally, we can all seek a bit of humility by recognizing, perhaps even explicitly in class, that we often learn from our students, and that there is more than one right way to address a problem or respond to a question.²¹⁸

Another stronghold of traditional law classrooms is cold-calling. One study of cold-calling found that its use did not resolve participation disparities along race and gender lines.²¹⁹ In fact, women were much more likely to report “extreme trepidation” about cold-calling than men.²²⁰ The study revealed that the threat of cold-calling changed how students read cases, “forc[ing] them to try to memorize minutiae, as opposed to trying to put together the bigger conceptual picture.”²²¹ By increasing student anxiety and moving discussion from the organic to the rote, cold-calling may negatively impact the development of intuitive reasoning.

Finally, the much-maligned “siloeing” of subjects in law school is inconsistent with good law practice, student learning, and an intuitive understanding of how best to address client problems.²²² Professor López has noted that the large-classroom model of legal education only infrequently leads to deep, comprehensive thinking and invites “siloeing” of topics in a way that does not reflect actual law practice.²²³ By designing a course of study that more intentionally

²¹⁶ *Id.* at 312.

²¹⁷ See Krieger, *supra* note 178, at 42 (quoting López, *supra* note 203, at 336) (positing that allowing students to find different solutions besides the one known to the professor would encourage students to engage with their creativity and self-reliance, which are key in fostering “confident and balanced new lawyers”); see also Lucille A. Jewel, *The Doctrine of Legal Writing: Book Review of Linda H. Edwards’s Readings in Persuasion: Briefs that Changed the World*, 1 SAVANNAH L. REV. 45, 46–48 (2014) (observing that the teaching of legal doctrine takes on a “dogmatic connotation, implying certainty in the law, the idea that one can arrive at the singular ‘correct’ understanding of a particular body of legal knowledge”).

²¹⁸ Krieger, *supra* note 178, at 42.

²¹⁹ See Kathryn M. Young, *Understanding the Social and Cognitive Processes in Law School that Create Unhealthy Lawyers*, 89 FORDHAM L. REV. 2575, 2590 (2021) (interviewing law students and finding that nearly all of the women—most of whom were nonwhite—and none of the men expressed severe fear about cold-calling).

²²⁰ *See id.*

²²¹ *Id.*

²²² See Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 CLINICAL L. REV. 269, 270–72 (2019) (describing the negative impact of silos on law students’ ability to transfer learning among courses, their ability to identify issues, and their research skills).

²²³ See López, *supra* note 203, at 317–18 (1989) (observing that, in the context of large classes, law

and accurately connects subject matter and uses real-world examples and simulations, law schools support the development of intuitive reasoning.

C. INCORPORATE DISCUSSIONS OF VALUES AND CONSIDERATIONS
THAT EXTEND BEYOND THE EXTERNAL AND ANALYTICAL

When faculty explore topics that “matter deeply,” students not only have the opportunity to engage in intuitive reasoning, but also see these explorations “as responses to our quest for meaning” and “embrace[] [such topics] with delight.”²²⁴ In contrast, when faculty avoid meaningful discussion of values, morality, justice, meaning, emotion, and similar topics, they miss out on an opportunity to inspire and support students. In the Carnegie Foundation for Higher Education’s groundbreaking 2007 report, “the authors sharply criticize[d] legal education because it communicates to students they must set aside their senses of justice and morality and their concern for others,” which “[s]tudents often find . . . confusing and disillusioning.”²²⁵ In one empirical study of law students, one student recounted the story of a Torts professor who told the class that race was irrelevant to the study of torts and used the term “the F word” to refer to fairness because “we can’t talk about fairness [in Torts].”²²⁶ When faculty avoid discussion of student values or litigant experiences, they reinforce the idea that the law should be divorced from emotion and compassion.

However, there are numerous opportunities to broaden the classroom discussion and context beyond the external and analytical to the internal and intuitive. For example, “[t]owards the end of one’s classes, following the usual focus on legal issues and analysis, providing occasional opportunities for broader discussion can encourage student awareness of the more subjective values and faculties coexisting with their intellects, and serve to powerfully legitimize the continued exercise of those faculties.”²²⁷ One way to create a broader discussion around the subject matter is use of the Socratic Seminar methodology. A Socratic Seminar is a circle of students who pose and answer questions to one another about a particular reading in order to delve more deeply into the text.²²⁸ Students can be asked to develop questions or draft their thoughts on some professor-prepared questions beforehand in order to ensure a discussion

students “can come to believe that having something glib to say is the equivalent of careful problem solving and provocative thinking”).

²²⁴ NODDINGS & SHORE, *supra* note 4, at 65–66.

²²⁵ Michael Hunter Schwartz, *Humanizing Legal Education Symposium: An Introduction to a Symposium Whose Time Came*, 47 WASHBURN L.J. 235, 235–36 (2008) (quoting WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 187 (2007)).

²²⁶ Young, *supra* note 219, at 2581 (quoting Second interview with Steven (Sept. 2020) (on file with author)).

²²⁷ Krieger, *supra* note 178, at 42–43.

²²⁸ See, e.g., Lisa Fink, *Crafting and Conducting a Successful Socratic Seminar*, NAT’L COUNCIL OF TCHRS. OF ENG.: BLOG (Dec. 9, 2017), <https://ncte.org/blog/2017/12/crafting-conducting-successful-socratic-seminar/>.

of sufficient preparation and depth. By creating a student-led discussion of a reading, professors step out of the way and place students' responses to the text at center stage. By doing so, faculty encourage a conversation that is more holistic, less professor-oriented, and ideally more authentic.

In addition, the classroom can be an important place for students and faculty to discuss world events, including high-profile cases and social and political events. In one study, law students commented that “the most important legal developments happening in their country felt distant from the law in their casebooks—and on the whole, their professors did little to bridge the gap.”²²⁹ By connecting coursework to the real world—and acknowledging the emotional and global context in which students are studying the law—faculty gain an opportunity to engage with students in a meaningful way, involve them more fully in their education, and help students understand better their emotional and intuitive responses.

D. USE ACTIVE LEARNING AND INTUITIVE ARRANGEMENTS OF SUBJECT MATTER IN CURRICULUM AND INSTRUCTION

In *Awakening the Inner Eye: Intuition in Education*, Nel Noddings and Paul J. Shore observe that “contemporary curriculum[-]making commits two great errors. The first is dictatorial prespecification of learning objectives, together with bland and uniform instruction to achieve them. The second . . . [is] emphasis on the general, cognitive, and rational over the concrete, affective, and nonrational.”²³⁰

An intuitive arrangement of curriculum takes intuition into account and “allow[s] for a direction to be taken, but [does] not point like an arrow at the beginning.”²³¹ Instead, an intuitively designed course curriculum “begins like a novel or a poem, piquing our interest, asking nothing but that we keep reading or listening or watching.”²³² By empowering students to develop an interest in the subject matter and then pursue that interest with some autonomy, professors allow students to engage in intuitive learning and tailor their learning to the methodology that best supports each individual student's learning.²³³ For

²²⁹ Young, *supra* note 219, at 2580 (noting student comments that few or none of their law professors discussed various important events taking place in 2020, including the death of Justice Ruth Bader Ginsburg).

²³⁰ NODDINGS & SHORE, *supra* note 4, at 129.

²³¹ *Id.* at 116–17. *See generally id.* at 116–53 (explaining “intuitive arrangements and presentations of subject matter” in curriculum and instruction).

²³² *Id.* at 117; *see also* Alfie Kohn, *Feel-Bad Education: The Cult of Rigor and the Loss of Joy*, EDUC. WK. (Sept. 15, 2004), <https://www.alfiekohn.org/article/feel-bad-education-article/> (observing that “interest drives achievement”).

²³³ *See* NODDINGS & SHORE, *supra* note 4, at 117 (“They must first have a reason, a certain passionate interest in the domain, before they turn to a study of it in detail.”). *See generally* N.E. Millar, *The Science of Successful Teaching: Incorporating Mind, Brain, and Education Research into the Legal Writing Course*, 63 ST. LOUIS U. L.J. 373, 393–95, 397–400 (2019) (discussing the fact that human brains are unique and learn in different ways and describing the value of contextual learning

example, offering students a choice of hypotheticals to work on and instructing them to “[l]ook these over and see which ones intrigue you”²³⁴ permits students to follow their instincts, focus their work, and self-direct toward their interests and goals. Alternatively, assigning individual research or writing projects that allow students to dive deeply into topics of interest permits students to engage with what inspires and motivates them, leading to increased enjoyment and learning.²³⁵

A student’s motivation, commitment to learning, and presence are heightened when she has an active role in constructing the purposes and goals of her education.²³⁶ Thus, the “arrangement or presentation of subject matter that is meant to take intuition into account must somehow function to secure the active participation of the student.”²³⁷ In contrast, professor “‘intervention’ [that] direct[ly] interfere[s] with the student’s own purposes” undermines student learning.²³⁸ For example, faculty could organize students into small groups to discuss cases or other materials with one another while the professor quietly circulates among the groups.²³⁹ By taking a less directive role, faculty encourage students to actively participate in their education.

Furthermore, “[a]n intuitive arrangement avoids traumatic changes of direction.”²⁴⁰ Allowing students to get into a flow of learning with the goal of understanding the material respects their intuitive process.²⁴¹ Honoring this flow by encouraging self-directed active learning that reflects students’ goals and interests leads to increased self-knowledge, connection with intuition, and learning.²⁴² This arrangement should not, however, be random or chaotic because routine and orderliness appear to encourage intuitive thinking by saving energy for intuitive modes.²⁴³

in the legal writing classroom).

²³⁴ NODDINGS & SHORE, *supra* note 4, at 124. A wise colleague of mine, the late Roseann Termini, offered her legal writing students a choice of appellate brief problems to write, allowing students to pursue whichever interested and intrigued them more.

²³⁵ See generally N.E. Millar, *Feel-Good Legal Education: Finding Joy in the Study of Law*, SOC. SCI. RSCH. NETWORK (May 23, 2023) (unpublished manuscript) (on file with author) (“When students perceive a task as important and leading to a feeling of enjoyment, they are more invested and engaged in the task.”).

²³⁶ See NODDINGS & SHORE, *supra* note 4, at 122–23, 125 (stating that “the sort of choice that stimulates engagement [should] be actively encouraged”).

²³⁷ *Id.* at 123; see also Leilani A. Arthurs & Bailey Zo Kreager, *An Integrative Review of In-Class Activities that Enable Active Learning in College Science Classroom Settings*, 39 INT’L J. SCI. EDUC. 2073, 2086 (2017) (“Lecture alone is largely incongruent with what we know about how people learn and contemporary college science education goals.”).

²³⁸ NODDINGS & SHORE, *supra* note 4, at 123.

²³⁹ *Id.* at 128.

²⁴⁰ *Id.* at 121.

²⁴¹ See *id.* at 121–22.

²⁴² See, e.g., Judy Willis, *The Neuroscience of Joyful Education*, 64 EDUC. LEADERSHIP 1, 2 (2007) (observing that “superior learning takes place when classroom experiences are enjoyable and related to students’ lives, interests, and experiences”).

²⁴³ See NODDINGS & SHORE, *supra* note 4, at 99 (“The idea is simple: Reduce change, opportunity

Finally, open-ended discussion and contextual learning honor students' interests and experiences. Rather than asking students to leave their beliefs, morals, and questions at the law school door, faculty can embrace what students bring to the classroom. Rather than students being "drawn away from the norms and conventions that many members of our society, including future clients, use to solve conflicts and moral dilemmas[,]”²⁴⁴ legal educators can make space for discussion of these issues. In doing so, faculty help to remind students of what brought them to law school in the first place, stoke their excitement and passion, and fan the flames of reasoning built not only on data and research but also on emotional responses and past experiences. These conversations add richness to the law classroom and soften the hierarchical teacher-student relationship, creating an atmosphere where students can learn from one another.

E. HELP STUDENTS UNPACK THEIR INTUITIVE THINKING WITH COGNITIVE TASK ANALYSIS

Educators rarely engage students in individual dialogue about their learning and thinking, despite the fact that “we profess to be deeply concerned with these matters.”²⁴⁵ Noddings and Shore suggest that faculty might discuss “impediments to full engagement” and “how we learn or why we hate certain subjects.”²⁴⁶ This type of meta-analysis of student learning has been suggested in the context of bar exam preparation and other aspects of legal education²⁴⁷ to allow students to evaluate what works and does not work for them as individuals. Armed with this knowledge, students can examine their own thinking styles and identify blocks to learning.

While some people rely on intuition to solve legal problems, “they may not be able to explain the specific thought processes they used to solve the problems.”²⁴⁸ Cognitive task analysis (CTA) is one solution to better understand what type of thinking is being used and how effective it is, offering the decision-maker greater self-awareness and agency. CTA identifies the strategies that decision-makers use, with the objectives of “help[ing] experts to express tacit knowledge, enabling researchers and novices to learn[,] and [allowing] systems to be improved.”²⁴⁹

for choice, and unpredictability in routine, nonintellectual matters and save stimulus-control energy for intuitive encounters.”).

²⁴⁴ Jewel, *supra* note 217, at 65 (quoting SULLIVAN ET AL., *supra* note 225, at 114).

²⁴⁵ NODDINGS & SHORE, *supra* note 4, at 91.

²⁴⁶ *Id.*

²⁴⁷ See, e.g., Louis N. Schulze, Jr., *Using Science to Build Better Learners: One School's Successful Efforts to Raise Its Bar Passage Rates in an Era of Decline*, 68 J. LEGAL EDUC. 230, 231 (2019).

²⁴⁸ Gantt, *supra* note 68, at 481 n.3 (citing BRAND & WHITE, *supra* note 68, at 140).

²⁴⁹ Swaby et al., *supra* note 58, at 2 (citing Daniel Kahneman & Gary Klein, *Conditions for Intuitive Expertise: A Failure to Disagree*, 64 AM. PSYCHOL. 515, 515–26 (2009)); see also KLEIN, *supra* note 18, at 39–40 (describing task analysis with Marines).

CTA has been used successfully in various fields to explore intuitive knowledge and decision-making. First employed in the business field, it utilizes “an interview technique for eliciting critical incidents to unpack the intuitive decision[-]making of experts.”²⁵⁰ CTA assists with understanding a particular decision-maker’s “knowledge representations, thought processes, mental strategies, and goal structures that underlie task performance.”²⁵¹

For example, it has been applied in the medical field to better understand how clinicians make decisions and manage uncertainty.²⁵² In a high school math education environment, one study gleaned empirical data about student learning from students’ “thinking-aloud protocols,” which were observed on a weekly basis.²⁵³

Applying these strategies to legal education, CTA offers students a structured way to assess and reflect on their own performance, and faculty can assist students with the CTA process in order to help students see their own thinking.²⁵⁴ For example, a professor would likely discover multiple intervention and correction points by sitting with a student as she walks the professor through her essay answer or writing project, identifying the steps she took, decisions she made, assumptions or inferences relied upon, and her goals. This process might include reframing the student’s goals from “I want the client to win” to “I want to provide a balanced analysis of both sides of the case” or from “I concisely articulated the narrow rule so I could get to the analysis more quickly” to “I provided a complete and detailed rule that gives a framework for the analysis that follows.” Faculty can model CTA by working through a problem and articulating their own thinking and goals as they complete an example.

CTA offers one concrete methodology to unpack students’ thinking and increase their self-awareness. By using CTA to focus students’ attention inward on their own learning strategies and goals, faculty provide a learning environment that is active, empowering, and effective.

²⁵⁰ Winston Sieck, *What Is Cognitive Task Analysis?*, GLOB. COGNITION (Sept. 20, 2021), <https://www.globalcognition.org/cognitive-task-analysis/>.

²⁵¹ Klaus-Peter Timpe et al., *Engineering Psychology*, in ENCYCLOPEDIA OF APPLIED PSYCH. 777–86 (Charles D. Spielberger ed., 2004); see also Richard E. Clark et al., *Cognitive Task Analysis*, in HANDBOOK OF RSCH. ON EDUC. COMMC’NS & TECH. 577–93 (J. Michael Spector et al. eds., 2008) (providing an overview of CTA).

²⁵² Swaby et al., *supra* note 58, at 2.

²⁵³ See JAMES G. GREENO, SOME EXAMPLES OF COGNITIVE TASK ANALYSIS WITH INSTRUCTIONAL IMPLICATIONS 3 (1979).

²⁵⁴ Intuition alone may not be as useful as CTA in assessing one’s own learning and cognition. See Robert A. Bjork et al., *Self-Regulated Learning: Beliefs, Techniques, and Illusions*, 64 ANNUAL REV. PSYCH. 417, 419 (2013) (“For reasons that are not entirely clear, our intuitions and introspections appear to be unreliable as a guide to how we should manage our own learning activities.”).

F. PROVIDE QUIET SPACES FOR DEEP INTUITIVE WORK

Bustling classrooms and jam-packed cafeterias are not ideal places for “the almost trance-like state characteristic of a deeply intuitive mode.”²⁵⁵ Indeed, “schools, with their emphasis on classes and group activities, provide a poor environment for engagement in intuitive modes . . . [because] [o]ne must be able to give attention to the object of knowledge without interruption.”²⁵⁶

Naturally, group work and classroom discussion are a critical part of legal education. But in contrast to the usual law classroom—typified by the professor and students talking for the entire class—providing quiet spaces allows “students to engage in reflexive inquiry” and “gain deeper insight.”²⁵⁷ One educator notes:

If silence makes me nervous and I don’t have the wisdom to wait for them to speak, students do not engage as readily in their own meaning-making processes. I learned to be still, to listen, to wait, and to appreciate the silence that oftentimes means that my students are thinking.²⁵⁸

Law schools can support intuitive modes of thinking by providing spaces where students can be alone and in silence.²⁵⁹ While these opportunities can take different forms and can happen at home, as well as on campus, the important goal is to “reduce noise and disorder, set the mind at peace, and induce the feeling that time is irrelevant—relative and controllable.”²⁶⁰ This quiet time can occur for a few minutes during a regular law class in the form of journaling or other writing, as well as individual time to work on essays, practice questions, or other classwork.²⁶¹

G. TEACH STUDENTS TO DISTINGUISH BETWEEN APPROPRIATE AND INAPPROPRIATE USES OF INTUITIVE REASONING

The use of intuition is not without drawbacks and errors.²⁶² Psychologists “suggest[] that intuitions can create errors in judgment where not properly disciplined by deliberative analysis.”²⁶³ Some legal scholars argue that

²⁵⁵ NODDINGS & SHORE, *supra* note 4, at 94.

²⁵⁶ *Id.* at 94–95.

²⁵⁷ Dulce María Gray, *Using Silence to Promote Spiritual Growth*, in *TEACHING WITH JOY* 45, 46 (Sharon Shelton-Colangelo et al. eds., 2007).

²⁵⁸ *Id.* at 47.

²⁵⁹ See NODDINGS & SHORE, *supra* note 4, at 95.

²⁶⁰ *Id.* at 95–96.

²⁶¹ See, e.g., Rachel Csar & Julie Gunnigle, *Today: We Write*, PREZI (Apr. 6, 2017), <https://prezi.com/zcmoizbqkbbw/today-we-write/> (describing “short, frequent bursts of writing accompanied by timely feedback”) (citing R.T. Kellogg, *Professional Writing Expertise*, in *THE CAMBRIDGE HANDBOOK OF EXPERTISE AND EXPERT PERFORMANCE* 389–402 (K.A. Ericsson et al. eds., 2006), <https://doi.org/10.1017/CBO9780511816796.022>).

²⁶² See GLADWELL, *supra* note 3, at 49; Mata et al., *supra* note 53, at 369.

²⁶³ Woolley, *supra* note 37, at 304.

overreliance on intuitive thinking can lead lawyers to prolong litigation.²⁶⁴ In one study of judicial decision-making, researchers found that reaching judgments based on intuition alone could lead to errors.²⁶⁵ Others point out the concern that “[u]nchecked intuition leaves decisionmakers vulnerable to cognitive biases and errors.”²⁶⁶ While no kind of decision-making is foolproof, these arguments reinforce the importance of integrating intuitive reasoning with deliberative analysis as a means to balance inadequacies in either approach.²⁶⁷

Of course, law students and lawyers must make deliberate, informed choices when relying on analytical or intuitive reasoning. For example, a lawyer making an appellate argument would not rely wholly on intuition instead of precedent and legal analysis. However, “the fact that one may find inappropriate the expression of deeper faculties of one’s self in a particular classroom or courtroom setting does not mean that the faculties themselves are inappropriate.”²⁶⁸ In any context, decision-makers should consider “the appropriate role of both [intuitive and analytical] thinking.”²⁶⁹

One problem that can arise when relying on intuitive reasoning is a narrowing of the field of potential solutions. By blending the two types of reasoning, decision-makers are less likely to rely solely on the information in front of them.²⁷⁰ Instead, a decision-maker might evaluate her initial intuitive reasoning and then proceed to a data-based analysis to either confirm or reverse her initial assessment.²⁷¹ Narrowing can sometimes lead a decision-maker to overlook ethical issues, as well, so incorporating a holistic approach to reasoning offers multiple benefits.²⁷²

Although intuitions are likely to be accurate in some circumstances and inaccurate in others, research indicates that the accuracy of intuition varies with

²⁶⁴ See Andrew J. Wistrich & Jeffrey J. Rachlinski, *How Lawyers’ Intuitions Prolong Litigation*, 86 S. CAL. L. REV. 101, 108–10 (2013).

²⁶⁵ Woolley, *supra* note 37, at 304 (first citing Chris Guthrie et al., *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1, 28 (2008); and then citing Jeffrey J. Rachlinski, *Heuristics, Biases, and Philosophy*, 43 TULSA L. REV. 865, 866 (2008)); see also Wistrich & Rachlinski, *supra* note 264, at 113 (stating that “[judges] tend to rely too heavily on intuition in many situations[,] . . . even [relying] excessively on intuition when performing simulated judicial tasks.”).

²⁶⁶ Wistrich & Rachlinski, *supra* note 264, at 118; see also Suzanne B. Goldberg, *Intuition and Feminist Constitutionalism*, in FEMINIST CONSTITUTIONALISM: GLOBAL PERSPECTIVES 102–03 (Beverly Baines et al. eds., 2012) (discussing the use of intuition, in the absence of data, to justify biased and discriminatory laws and decisions regarding gender- and sex-based issues).

²⁶⁷ See Woolley, *supra* note 37, at 306.

²⁶⁸ Krieger, *supra* note 178, at 11.

²⁶⁹ O’Grady, *supra* note 137, at 672–76 (citing JENNIFER K. ROBBENOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING* 86–88 (2012)).

²⁷⁰ See *id.* at 693.

²⁷¹ See SUSAN E.A.M. GOETHE, *A STUDY OF INTUITIVE THINKING* 6 (1976) (explaining the reasoning decision-makers default to in analyzing their work).

²⁷² See generally O’Grady, *supra* note 137, at 689–92 (discussing the strategic nature of decision-makers, and their likelihood of neglecting moral issues).

one's level of expertise in the task domain.²⁷³ Thus, law schools should educate law students about how best to access and employ intuitive reasoning, both as students and as attorneys. With greater education in intuitive reasoning, students will be better prepared to provide competent, ethical legal representation.

IV. CONCLUSION

This article suggests that legal education should take a closer look at the way it educates. In light of the number of studies, articles, and books describing legal education's disastrous effect on the health and well-being of law students, legal educators can no longer continue to wave the flag of "it has always been done this way."²⁷⁴ Indeed, it is unethical to do so.

This article endeavors to question one cornerstone of law teaching—the premise that intuition (and its sister, emotion) has no role to play in the law. As discussed above, that is simply not true. And by actively repressing intuitive reasoning, Western culture and law school culture hamper students and lawyers both personally and professionally. Using concrete steps to shift law school from an external to an internal focus, from institutions that concentrate only on analytical, logical analysis to institutions that recognize the value of holistic thinking, faculty can start to counteract the depressing and dehumanizing impact of legal education on students.

By engaging students in topics that "matter deeply"²⁷⁵—moral, ethical, emotional, and *universal* questions—faculty can motivate and inspire students to think differently, to approach their education and their law practice differently, to "embrace[] with delight" legal education as part of—not the antithesis of—their personal quest for meaning.²⁷⁶

²⁷³ See Thorsten Pachur & Melanie Spaar, *Domain-Specific Preferences for Intuition and Deliberation in Decision Making*, 4 J. APPLIED RSCH. MEMORY & COGNITION 303, 303–05 (2015) (first citing HOGARTH, *supra* note 17; and then citing KLEIN, *supra* note 18).

²⁷⁴ See generally López, *supra* note 203, at 306 (discussing legal education's resistance to change).

²⁷⁵ NODDINGS & SHORE, *supra* note 4, at 65.

²⁷⁶ See *id.* at 65–66.