



## ***4-7-8 Breathing Exercise***

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*For optimal results, it is recommended that you sit up straight with your shoulders back.*

*Upon Inhalation you will breathe through your nose and exhale out of your mouth*

*During this exercise give all your attention to your breath and bodily sensations. Notice the air passing through your nasal passages and out through your mouth, notice the rise and fall of your abdomen.*

### **Instructions**

1. Close your mouth and inhale into your diaphragm and through the nose to a count of 4.
2. Hold your breath for a count of 7.
3. Exhale through your mouth to a count of 8.
4. Complete three repetitions, twice daily.

*\*if holding your breath for this long is difficult, shorten the exercise but keep the same ratio eg. 2-3.5-4*

# MINDFULNESS IN LAW: A PATH TO WELL-BEING AND BALANCE FOR LAWYERS AND LAW STUDENTS

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*The National Task Force on Lawyer Well-Being has raised strong concerns about the poor state of the mental health and well-being of lawyers and law students across the country. The co-chairs of the Task Force concluded that recent studies' findings of professional ill health and lack of well-being were incompatible with a sustainable legal profession and raised troubling implications for many lawyers' basic competence. This Article takes an in-depth look at the relevance of mindfulness for the legal profession and legal education and offers mindfulness as one way to begin to respond effectively to the Task Force's concerns. After first reviewing studies demonstrating high rates of depression, anxiety, and substance abuse among lawyers and law students, it reviews personal and professional options that have been used to date, with limited success, to address these problems, and it offers that developing a routine mindfulness practice could be one potential, effective solution to promoting the mental health and well-being of lawyers and law students. This Article explains what mindfulness is, describes a few of its most common meditation practices, and explores the benefits that can ensue from regular mindful practices, which have been scientifically supported in the clinical literature. It analyzes how the Author's law school has incorporated mindfulness and other wellness programs into its offerings for law students and offers some recommendations for how other law schools and legal employers might adopt mindfulness programs. This Article concludes by encouraging law schools and legal employers to incorporate mindfulness training and other wellness programs designed to enhance the health and well-being of law students and lawyers.*

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## INTRODUCTION

Mindfulness has become a hot topic in the news and on social media.<sup>1</sup> Major corporations—including Google, General Mills, Intel, Aetna, and Goldman Sachs—have adopted mindfulness programs for their employees.<sup>2</sup> Mindfulness

1. Jacob Gershman, *Lawyers Go Zen, With Few Objections*, WALL ST. J. (June 18, 2015), <https://www.wsj.com/articles/lawyers-go-zen-with-few-objections-1434586250>; *Mindfulness Is Sweeping the Western World 'at a Momentous Rate' Says Its Pioneer*, POSITIVE NEWS (Apr. 20, 2013), <https://www.positive.news/2013/lifestyle/wellbeing/12051/mindfulness-sweeping-western-world-at-momentous-rate-pioneer/>.

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

training has also been introduced in other diverse settings, such as universities,<sup>3</sup> schools,<sup>4</sup> religious institutions,<sup>5</sup> health-care organizations,<sup>6</sup> professional sports,<sup>7</sup> police departments,<sup>8</sup> prisons,<sup>9</sup> and the U.S. military.<sup>10</sup>

This Article explores the relevance of mindfulness to the legal profession and legal education. Part I reviews studies that demonstrate that lawyers and law students have high rates of depression, anxiety, and substance abuse. Part II of this Article reviews professional and personal options that have been used to date, with limited success, to address these problems. In addition, Part II suggests that

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mindfulness-henry-stewart/; Jeanne Meister, *Future of Work: Mindfulness As a Leadership Practice*, FORBES (Apr. 27, 2015, 1:35 PM), <http://onforb.es/1FrSfcc>.

3. Sally Weale, *Mindfulness Boosts Student Mental Health During Exams, Study Finds*, THE GUARDIAN (Dec. 18, 2017, 6:30 PM), <https://www.theguardian.com/lifeandstyle/2017/dec/18/mindfulness-boosts-student-mental-health-during-exams-cambridge-university-study-finds>.

4. Kelly Wallace, *Calming the Teenage Mind in the Classroom*, CNN (Feb. 9, 2016), <https://www.cnn.com/2016/02/08/health/mindfulness-teenagers-schools-stress/index.html>.

5. See, e.g., *Living Life Deliberately: Mindfulness Meditation in Daily Life*, CHURCH HEALTH (Jan. 29, 2018), <https://churchhealth.org/event/living-life-deliberately-mindfulness-meditation-in-daily-life-19/>; *Mindfulness-Based Stress Reduction*, OLD ST. PATRICK'S CHURCH (July 18, 2017), <http://www.oldstpats.org/mbsr/>; *Mindfulness Meditation*, THE CATHEDRAL OF HOPE, <http://cathedralofhope.org/event/mindfulness-meditation/all/>.

6. Pandit Dasa & David Brendel, *Does Mindfulness Training Have Business Benefits*, SOC. FOR HUMAN RESOURCE MGMT. (Mar. 23, 2017), <https://www.shrm.org/hr-today/news/hr-magazine/0417/pages/does-mindfulness-training-have-business-benefits.aspx>.

7. Gretchen Reynolds, *Does Mindfulness Make for a Better Athlete*, N.Y. TIMES: WELL (Sept. 30, 2015, 5:45 AM), <https://well.blogs.nytimes.com/2015/09/30/does-mindfulness-make-for-a-better-athlete/>; Christine Yu, *Mindfulness for Athletes: The Secret to Better Performance*, DAILY BURN (June 10, 2014), <http://dailyburn.com/life/fitness/mindfulness-techniques-athletes/>.

8. Hanna Kozłowska, *U.S. Police Forces are Practicing Mindfulness to Reduce Officers' Stress—and Violence*, QUARTZ (Jul. 10, 2017), <https://qz.com/1025231/police-departments-in-the-us-are-practicing-mindfulness-to-reduce-officers-stress-and-violence/>; Richard Goerling, *Mindful Policing*, MINDFUL (Mar. 16, 2017), <https://www.mindful.org/richard-goerling-mindful-policing>.

9. *3 Ways Prisons Are Becoming Mindful*, MINDFUL (Mar. 27, 2017), <https://www.mindful.org/3-ways-prisons-becoming-mindful/>; Lindsay Holmes, *This 2-Minute Practice Could Make Prisons a Healthier Place*, HUFFPOST (Nov. 7, 2016, 12:33 PM), [https://www.huffingtonpost.com/entry/mindfulness-benefits-corrections-officers\\_us\\_581a2941e4b08f9841acc5be](https://www.huffingtonpost.com/entry/mindfulness-benefits-corrections-officers_us_581a2941e4b08f9841acc5be).

10. Ella Xiong, *Mindfulness in the Military*, DISCOVER: THE CRUX (Apr. 14, 2016, 3:17 PM), <http://blogs.discovermagazine.com/crux/2016/04/14/meditation-in-the-military-ptsd/#.WnzFV5M-dmA>; Melissa Myers, *Improving Military Resilience Through Mindfulness Training*, U.S. ARMY (June 1, 2015), [https://www.army.mil/article/149615/improving\\_military\\_resilience\\_through\\_mindfulness\\_training](https://www.army.mil/article/149615/improving_military_resilience_through_mindfulness_training); Tom Jacobs, *Mindfulness Training Produces Less-Stressed Marines*, PAC. STANDARD (May 15, 2014), <https://psmag.com/social-justice/mindfulness-training-produces-less-stressed-marines-81633>.

developing a routine mindfulness practice could be one potential effective solution to promote the mental health and well-being of lawyers and law students. Parts III and IV explain what mindfulness is and describe a few of its most common meditation practices. Part V explores the benefits, which have been scientifically supported in the clinical literature, that can ensue from regular mindful practices. Part VI reviews some of the neuroscientific evidence suggesting how meditation can positively change brain structure and function. Part VII identifies some challenges to maintaining a mindfulness practice over the long term. Part VIII explores how the Author's law school has incorporated mindfulness and other wellness programs into its offerings for law students, and it offers some recommendations for how other law schools and legal employers might tailor mindfulness and other wellness programs to their institutions. This Article concludes by offering the reflections of a law student who writes about how she has benefitted from mindfulness training, and by encouraging law schools and legal employers to incorporate mindfulness training and other wellness programs into their curriculum and practices to enhance the health and well-being of law students and lawyers.

### I. WHAT'S THE PROBLEM?

Anecdotal evidence and the personal experiences of practicing lawyers attest to the high amounts of stress in their daily lives. By nature, lawyers tend to be both perfectionists and pessimists, concerned with zealously protecting their clients' welfare to the best of their abilities and constantly looking out for downsides, risks, and practical and legal problems with alternate courses of action. Coupled with often-overwhelming workloads to be handled under tight time pressures, this continual state of high alertness unrelieved by breaks and downtime can lead to stress, frustration, and burnout.<sup>11</sup>

In August 2017, the National Task Force on Lawyer Well-Being sounded a piercingly loud alarm about the poor state of the mental health and well-being of lawyers and law students.<sup>12</sup> In light of two previous studies on lawyer mental health and substance-use disorders and law-student well-being (whose results are reported below in Part II), the co-chairs of the Task Force bluntly stated:

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current

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11. Leslie A. Gordon, *How Lawyers Can Avoid Burnout and Debilitating Anxiety*, A.B.A. J. (July 2015), [http://www.abajournal.com/magazine/article/how\\_lawyers\\_can\\_avoid\\_burnout\\_and\\_debilitating\\_anxiety](http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitating_anxiety).

12. NATIONAL TASK FORCE ON LAWYER WELL-BEING, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* 7 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf> [hereinafter NATIONAL TASK FORCE REPORT].

state of lawyers' health cannot support a profession dedicated to client service and dependent on public trust.<sup>13</sup>

#### A. Attorney Survey

A 2016 survey (the Krill study) of 12,825 licensed, employed attorneys assessed their alcohol use, drug use, and symptoms of depression, anxiety, and stress.<sup>14</sup> The Krill study found substantial rates of behavioral-health problems, which were experienced at the following levels among this population: 28% for depression, 19% for anxiety, 23% for stress, and 20.6% for problematic drinking.<sup>15</sup>

Younger lawyers and men were more at risk for the harmful use of alcohol.<sup>16</sup> Men had higher levels of depression, while women had higher levels of anxiety and stress.<sup>17</sup> These levels were assessed at the time the survey was taken. "In terms of career prevalence, 61% reported concerns with anxiety at some point in their career and 46% reported concerns with depression."<sup>18</sup> While fewer than 1% of the attorneys reported suicide attempts, 2.9% reported self-injurious behaviors, and 11.5% reported suicidal thoughts at some point in their careers.<sup>19</sup>

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13. *Id.* at 1.

14. Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46, 46 (2016) [hereinafter *Krill study*], [http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The\\_Prevalence\\_of\\_Substance\\_Use\\_and\\_Other\\_Mental.8.aspx](http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx). The study was supported by the Hazelden Betty Ford Foundation and the ABA Commission on Lawyer Assistance Programs. *Id.*

15. *Id.* at 51. For comparison, while 20.6% of attorneys in the *Krill study* screened positive for "hazardous, harmful, and potentially alcohol-dependent drinking," other studies using the same measurement scale found that 15% of physicians screened positive for problematic drinking, as did 11.8% of a broad, highly educated workforce. *Id.* Attorneys in their first ten years of practice experienced the highest rate of problematic drinking (28.9%), and those under age 30 had the highest rates of all (32.3%). *Id.* Mental-health concerns often co-occur with alcohol-use disorders, and the *Krill study* showed significantly higher levels of depression, anxiety, and stress among those who screened positive for problematic alcohol use. *Id.* Attorneys working in private law firms had some of the highest levels of problematic alcohol use compared with other work environments—e.g., government, non-profit, in-house counsel. *Id.* In the *Krill study*, 84.1% of surveyed attorneys reported using alcohol in the last year. *Id.* at 47. For comparison, about 65% of the general population drinks alcohol. Eilene Zimmerman, *The Lawyer, The Addict: A high-powered Silicon Valley attorney dies. His ex-wife investigates, and finds a web of drug abuse in his profession*, N.Y. TIMES (July 15, 2017), <https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html>. Whether attorneys are drinking to cope with their psychological or emotional problems, or their drinking is leading to these problems, the *Krill study* noted that "the ubiquity of alcohol in the legal professional culture certainly demonstrates both its ready availability and social acceptability." *Krill study, supra* note 14, at 51.

16. *Krill study, supra* note 14, at 48.

17. *Id.* at 49.

18. *Id.* at 51.

19. *Id.* at 50.

The Krill study data that were collected on attorneys' drug use (both licit and illicit drugs) did not allow the researchers to draw statistically valid inferences.<sup>20</sup> Only one-quarter of those attorneys in the survey answered questions about their drug use, leading the study's lead author, Patrick Krill, to observe the following: "It's left to speculation what motivated 75% of attorneys to skip over the section on drug use as if it wasn't there," possibly fear of consequences for bar licensing.<sup>21</sup> While alcohol is still the number-one substance-abuse problem for attorneys, the second-most commonly abused substance is prescription drugs.<sup>22</sup> A substance-abuse recovery expert said that:

[W]e're seeing a significant rate of increase specifically among attorneys using prescription medications that become a gateway to street drugs. [It used to be mostly alcohol] but now almost every attorney that comes in for treatment, even if they drink, they are using drugs too—Xanax, Adderall, opiates, cocaine, and crack.<sup>23</sup>

Just as problematic drinking can be associated with stress, depression, and anxiety, it can also be associated with opioids and stimulants. "In fact, drugs [including cocaine] are sometimes used to combat the symptoms of alcohol withdrawal."<sup>24</sup> With respect to the Krill study participants who acknowledged using a specific substance class in the previous 12 months, the report showed the following rates of highest weekly usage: stimulants (74.1%), sedatives (51.3%), tobacco (46.8%), marijuana (31.0%), and opioids (21.6%).<sup>25</sup>

Only 6.8% of the surveyed attorneys reported past treatment for alcohol or drug use.<sup>26</sup> Attorneys reported that the two largest barriers to seeking treatment were not wanting others to find out that they needed help and concerns regarding privacy or confidentiality.<sup>27</sup>

### ***B. Law-Student Survey***

Similar findings were reported in 2016 based on the Survey of Law Student Well-Being (the SLSWB study), in which approximately 3,300 law students at 15 law schools across the country participated.<sup>28</sup> The SLSWB study primarily sought

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20. *Id.* at 49.

21. Zimmerman, *supra* note 15.

22. *Id.*

23. *Id.*

24. *Id.*

25. Krill study, *supra* note 14, at 49. Overall, the percentages of attorneys who acknowledged using the following substances in the previous 12 months were: alcohol (84.1%), tobacco (16.9%), sedatives (15.7%), marijuana (10.2%), opioids (5.6%), stimulants (4.8%), and cocaine (0.8%). *Id.*

26. *Id.* at 50.

27. *Id.*

28. Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116–56 (2016), <http://jle.aals.org/home/vol66/iss1/13/> [hereinafter *SLSWB study*]. Study results focusing on law students' help-seeking behaviors were previously published by the same authors in

to determine the extent of alcohol use, drug use, and mental-health issues among law students, and whether law students were reluctant to seek help for these issues and the reasons for such reluctance.<sup>29</sup> The study found the following percentages of law-student respondents engaged in alcohol use: 53% drank enough to get drunk in the prior 30 days, 43% binge drank at least once in the prior two weeks (median number of drinks was seven for men, five for women), and 22% binge drank two or more times in the prior two weeks.<sup>30</sup> The study found the percentages of law students who used street drugs were as follows: 25% used marijuana in the last 12 months, 14% used marijuana in the last 30 days, 6% used cocaine in the last 12 months, and 2% used cocaine in the last 30 days.<sup>31</sup> Fourteen percent of law students reported using prescription drugs without a prescription in the last 12 months, while 9% used stimulants (of these, 79% used Adderall), and 4% used sedatives/ anxiety medication.<sup>32</sup>

The SLSWB study found the following percentages of law-student respondents who screened positive for the following mental-health issues: 17% for depression,<sup>33</sup> 37% for anxiety (of which 23% experienced mild to moderate anxiety

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*Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders*, B. EXAMINER, Dec. 2015, at 8–17, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2815513](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2815513). The SLSWB study was sponsored by the ABA Commission on Lawyer Assistance Programs, Law Student Division, Solo, Small Firm and General Practice Division, Young Lawyers Division, and Commission on Disability Rights, as well as with support from the Dave Nee Foundation. *SLSWB study, supra*, at 118.

29. *SLSWB study, supra* note 28, at 118.

30. *Id.* at 128–29. For comparison, other studies that screened other graduate students and undergraduate students for alcohol use reported the percentages as, respectively, 39%, 36%, and 21% (graduate) and 61%, 45%, and 30% (undergraduate). *Id.* at 128. SLSWB study respondents ages 21–30 were approximately twice as likely to report binge-drinking behavior as those over age 30. *Id.* at 129. Twenty-five percent of respondents (27% men, 23% women) screened positive for needing more careful evaluation for alcoholism. *Id.* at 131.

31. *Id.* at 133. For comparison, the percentages for graduate students were 14% and 7% (marijuana) and 2% and 1% (cocaine), and for undergraduate students the percentages were 33% and 18% (marijuana) and 4% and 1% (cocaine). *Id.*

32. *Id.* at 134–35. The most commonly reported reasons for using prescription stimulants without a prescription were to concentrate better while studying (67%) and to increase alertness to study longer (64%). *Id.* Nearly 20% said they used prescription stimulants without a prescription in order to “prevent other students who [use a prescription stimulant] from having an academic edge over me.” *Id.* at 135.

33. *Id.* at 136. This percentage of law-student respondents who screened positive for depression compares with 14% of other graduate-student respondents and 20% of undergraduate respondents. *Id.*



and 14% experienced severe anxiety),<sup>34</sup> and 6% for having had serious suicidal thoughts in the past 12 months.<sup>35</sup>

A primary focus of the SLSWB study was on law students' attitudes toward seeking help for substance use or mental-health issues. Of the students who reported that they were likely or very likely to seek help for an alcohol or drug problem, 81% said they would seek help from a health professional, 30% from a lawyer-assistance program, and 14% from a law-school dean of students.<sup>36</sup> Of the students who reported that they were likely or very likely to seek help for a mental-health concern, 79% said they would seek help from a health professional, while 15% said they would seek help from a law-school dean of students.<sup>37</sup> Only 4% reported that they had actually used a health professional for alcohol or drug issues.<sup>38</sup> With respect to mental-health issues, 42% of law-student respondents reported a perceived need for help with emotional or mental-health problems, yet only approximately half of these respondents actually received counseling from a health professional.<sup>39</sup>

The most common factors that discouraged the law-student respondents from seeking help from a health professional with respect to substance-use and mental-health concerns are depicted in Figure 1.<sup>40</sup>

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34. *Id.* at 137. For comparison, the percentage of graduate students who screened positive for anxiety was 15% and for undergraduate students was 21%, of which 5% (graduate) and 8% (undergraduate) was for severe anxiety. *Id.*

35. *Id.* at 139. For comparison, 9% of undergraduate respondents and 5% of graduate-student respondents reported they had thought seriously about suicide in the prior 12 months. *Id.*

36. *Id.* at 140 n.91.

37. *Id.* at 140.

38. *Id.*

39. *Id.* Female respondents (50%) were more likely than male respondents (31%) to report a perceived need for help with mental-health concerns, and of those, female respondents (28%) reported getting help with more frequency than male respondents (19%). *Id.* at 140. Within the subgroup of respondents with three or more of five issues of concern (two or more incidents of binge drinking, use of street drugs, use of prescription drugs without a prescription, positive screening for depression, or positive screening for severe anxiety), the percentages believing that they were better off keeping their problems to themselves were high for alcohol/drug use (72%) and mental health (62%), leading the study authors to suggest that "those who might benefit the most from getting help appear to be among those least inclined to seek help." *Id.* at 142.

40. *Id.* at 141.

Figure 1.

Discouraging Factor	Percentage Regarding Substance Use	Percentage Regarding Mental Health
Potential threat to bar admission	63%	45%
Potential threat to job or academic status <sup>41</sup>	62%	48%
Social stigma <sup>42</sup>	43%	47%
Concerns about privacy	43%	30%
Financial reasons	41%	47%
Belief that they could handle the problem themselves <sup>43</sup>	39%	36%
Not having time	36%	34%

## II. SOLUTIONS: WHAT CAN BE DONE?

The National Task Force Report makes a wide range of recommendations for judges, regulators, legal employers, law schools, bar associations, lawyers' professional-liability carriers, and lawyer-assistance programs. The Report incorporates many of the recommendations from the earlier Krill and SLSWB studies, and it suggests reforms in institutional structures, incentives, and behaviors to support their respective constituents' health and well-being.<sup>44</sup> Part II reviews

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41. Third-year law students were more likely to express this concern than first-year law students, leading the study authors to suggest that "while in law school, students are getting messages indicating that seeking help for mental health concerns or alcohol/drug concerns may be problematic for their academic or professional careers." *Id.*

42. Male respondents (54%) had a higher concern than female respondents (41%) about the social stigma associated with mental-health issues. *Id.*

43. Male respondents were more likely than female respondents to think they could handle things themselves with respect to substance-use (51% for males; 30% for females) and mental-health concerns (45% for males; 29% for females). *Id.*

44. NATIONAL TASK FORCE REPORT, *supra* note 12, at 35–40 (specific recommendations for law schools); *id.* at 41–42 (specific recommendations for bar associations); *id.* at 45–46 (specific recommendations for lawyer-assistance programs). More generally, the report made broad recommendations for all legal-professional stakeholders, including, *inter alia*, acknowledging the problems and taking responsibility for them, demonstrating that institutional leaders are personally committed to well-being, encouraging help-seeking behaviors, consulting with well-being experts, fostering collegiality and respect throughout the profession, promoting diversity and inclusivity, creating mentoring programs, enhancing lawyers' sense of control, providing educational programs and materials about lawyer well-being, deemphasizing alcohol at social events, utilizing monitoring to support recovery from substance-use disorders, and beginning a dialogue about suicide prevention. *Id.* at 12–21.

some of these recommendations and highlights some individual and professional options for lawyers and law students that, unfortunately, to date have been insufficient by themselves to ensure lawyers' and law students' health and well-being.

#### *A. Personal Options*

The usual recommendations for stress relief and the promotion of health and well-being—such as healthy diet, regular exercise, adequate sleep, development of social relationships, and time off for recreational activities and vacations—are well known and have been shown to contribute to well-being.<sup>45</sup> However, all of these activities require the self-discipline to make the time and space for them in one's life, which can seem challenging or impossible in the context of lawyers' and law students' day-to-day, often overwhelmingly busy and demanding work lives.

These recommendations are sound and largely aimed at prevention of serious health problems. Unfortunately, many lawyers and law students neglect these strategies until health disorders arise. Professional counseling and mental-health therapy are options for individual attorneys who are at risk for, or have developed, mental and behavioral issues. However, the stigma and reputational risks perceived to be associated with seeking professional help—particularly in the legal-professional culture of perfectionism, self-sufficiency, and competence—can deter individuals from seeking the help they need (as evidenced by the Krill and SLSWB studies discussed above).

#### *B. Professional Options*

Bar associations have developed lawyer-assistance programs to help attorneys cope with behavioral-health issues once they arise, although it is likely that these programs are underutilized. The ABA's Commission on Lawyer Assistance Programs offers a range of resources, including free videos and contact information for organizations that can help address these issues.<sup>46</sup>

To overcome the pervasive stigma associated with substance-use disorders and mental-health issues, the Krill study encouraged more public-awareness campaigns and professional education aimed at prevention.<sup>47</sup> To address privacy

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45. See Debra S. Austin, *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791, 828–54 (2013), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2227155](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2227155) (reviewing the neurobiology of a variety of activities that can improve cognitive performance, including exercise, sleep, and contemplative practices such as mindfulness, meditation, yoga, relaxation training, and gratitude practices, and concluding that “[n]eural self-hacking is likely to be the newest fitness movement and law students, law professors, and lawyers should be among the early adopters of a regimen of cognitive wellness.”).

46. *Commission on Lawyer Assistance Studies*, A.B.A., [https://www.americanbar.org/groups/lawyer\\_assistance.html](https://www.americanbar.org/groups/lawyer_assistance.html) (last visited July 27, 2018).

47. *Krill study*, *supra* note 14, at 52.

concerns, it recommended that the confidential nature of lawyer-assistance programs be more widely publicized.<sup>48</sup>

The authors of the SLSWB study on law-student well-being addressed many of their recommendations to law-school faculty, staff, and administrators. Law-school applications often have character-and-fitness questions that are similar to those of a state bar, and so admissions officials may have the ability to identify potentially-at-risk students early on and refer them to resources, including the law school's dean of students.<sup>49</sup> However, in light of the SLSWB study's finding that most students are reluctant to seek help from a dean of students, the dean of students must be well informed and able to effectively raise awareness about wellness issues and resources and help students cope with law-school stressors in a caring and productive way.<sup>50</sup> Faculty are often on the conversational front lines with students and should be trained to recognize warning signs of behavioral-health issues and to refer to other professionals for help.<sup>51</sup>

To reduce the stigma associated with alcohol, drug, and mental-health issues, the SLSWB study's authors recommended that law schools actively publicize their alternative wellness resources beyond the dean of students because such publicity normalizes the process of seeking help.<sup>52</sup> They also recommended coordinating law-school efforts with the local Board of Law Examiners and the state bar's lawyer-assistance program to develop a concerted approach to wellness.<sup>53</sup> Coordination with the state bar conveys that these are real-world concerns, and they should be addressed while in school.<sup>54</sup>

### C. Mindfulness Options

Mindfulness is both a personal and professional option. While it is practiced on an individual basis, it can be supported easily by employers, bar associations, and law schools, which can make the trainings available to their lawyers or law students and encourage mindfulness practices during the work week.

The National Task Force Report strongly endorsed the benefits of mindfulness meditation for the legal profession:

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48. *Id.*

49. David Jaffe, who is the Associate Dean for Student Affairs at American University Washington College of Law and was the lead author for the law-school section of the National Task Force Report, has advocated for bringing at-risk entering law students "to the attention of someone at the law school for targeted, positive outreach. These students need to know that they are admitted unconditionally and that, should new stressors inherent to law school exacerbate preexisting conditions, they have one or more confidential resources to turn to." David B. Jaffe, *The Key to Law Student Well-Being? We Have to Love Our Law Students*, PD Q. 11, 12 (Feb. 2018), <https://www.wcl.american.edu/impact/lawwire/the-key-to-law-student-well-being-we-have-to-love-our-law-students/article/>.

50. *SLSWB study*, *supra* note 28, at 147–48.

51. *Id.* at 153.

52. *Id.* at 150.

53. *Id.*

54. *Id.*

Mindfulness meditation is a practice that can enhance cognitive reframing (and thus resilience) by aiding our ability to monitor our thoughts and avoid becoming emotionally overwhelmed. . . . Research has found that mindfulness can reduce rumination, stress, depression, and anxiety. It also can enhance a host of competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced burnout, and ethical and rational decision-making. . . . Evidence also suggests that mindfulness can enhance the sense of work-life balance by reducing workers' preoccupation with work.<sup>55</sup>

Mindfulness is not a substitute for professional counseling when such counseling is needed. It can, however, be an effective practice to maintain personal equanimity and foster resilience in an increasingly stressful profession and distracted world.

### III. WHAT IS MINDFULNESS, AND WHAT IS ITS RELEVANCE FOR LAWYERS AND LAW STUDENTS?

According to Jon Kabat-Zinn, professor of medicine emeritus at the University of Massachusetts Medical Center and creator of the highly successful mindfulness-based stress reduction (MBSR) program, mindfulness “is awareness, cultivated by paying attention in a sustained and particular way: on purpose, in the present moment, and non-judgmentally.”<sup>56</sup> In typical lawyer fashion, we need to parse each of these phrases to understand their importance and relevance to the legal profession.<sup>57</sup>

**Awareness.** Lawyers are understandably achievement oriented and spend years of hard work during and after law school to become experts in their fields. However, professional expertise can come at a cost to personal growth if it closes off our natural attributes of open-mindedness and curiosity. We can get stuck as human *doings*, rather than living fully as human *beings*. Despite widespread use of the Socratic method in law-school classrooms to promote learning to “think like a lawyer,” legal education and the legal profession too often deemphasize the Socratic principle to “know thyself.”<sup>58</sup> Learning to become a self-aware and self-reflective

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55. NATIONAL TASK FORCE REPORT, *supra* note 12, at 52–53 (citations omitted).

56. JON KABAT-ZINN, MINDFULNESS FOR BEGINNERS: RECLAIMING THE PRESENT MOMENT—AND YOUR LIFE 1 (2012). For other books that introduce mindfulness to the general public, see generally BHANTE HENEPOLA GUNARATANA, MINDFULNESS IN PLAIN ENGLISH (2015); DANIEL GOLEMAN, ELLEN LANGER & SUSAN DAVID, HARVARD BUSINESS REVIEW, MINDFULNESS: HBR EMOTIONAL INTELLIGENCE SERIES (2017).

57. This Part III has been adapted from Charity Scott, *Tips for Practitioners/Practicing Mindfulness in Law*, GA. ST. L. ALUMNI MAG., Spring 2016, at 30, and it is incorporated here with permission.

58. The Socratic ideal of self-knowledge goes back to the Delphic inscription on the Temple of Apollo to “know thyself.” Donald Phillip Verene, *Vichian Moral Philosophy: Prudence as Jurisprudence*, 83 CHI.-KENT L. REV. 1107, 1110 (2008); see Richard K. Neumann Jr., *Donald Schön, The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401, 424 (2000) (observing that reflective journaling is

practitioner, continually open and curious about oneself and one's world, is perhaps the most important lawyering skill that someone can develop for effectively navigating a professional life that is increasingly characterized by rapid change, continual uncertainty, and clashing ethical values.<sup>59</sup>

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limited to clinical courses in law schools and that “legal education is far behind all the other professions in providing reflective practica”).

59. Professor Donald Schön's work on the reflective practitioner pioneered the view that professionals often must act well in situations of “uncertainty, instability, uniqueness, and value conflict,” and that they do so best through a process of “reflection-in-action.” DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* 50 (1983). In this book, Schön contrasted his view with the more traditional view of professional practice as the exercise of technical expertise. *Id.* at 69. Since this book was published, reformers in legal education have championed the role of self-reflection in legal education and the profession. For example, in *Best Practices for Legal Education: A Vision and a Road Map*, the authors cite to Schön's works on reflective learning by professionals and state that “[a]ll professionals must be life-long learners. . . . The key skill set of lifelong learners is reflection skills. The entire law school experience should help students become expert in reflecting on their learning process.” ROY STUCKEY & OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 48 (2007), [http://www.cleaweb.org/Resources/Documents/best\\_practices-full.pdf](http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf). In *Educating Lawyers: Preparation for the Profession of Law*, a seminal work on legal-education reform, the authors highlighted the importance of self-reflection as a core lawyering skill, observing that:

[t]he mark of professional expertise is the ability to both act and think well in uncertain situations.

. . . .  
 . . . Practical skill is developed through modeling, habituation, experiment, and reflection.

. . . .  
 . . . In order to become expert in a profession, making good grades with minimal effort has to give way to a complete involvement with learning new ways of thinking, performing, and understanding oneself.

WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 9, 14, 27 (2007).

While they acknowledged that law students must undergo two other key “apprenticeships” in developing certain cognitive and practice-based lawyering skills, the reformers argued that it is the third apprenticeship, “the ethical-social apprenticeship [.] through which the student's professional self can be most broadly explored and developed . . . [F]ormative education must enable students to become self-reflective about and self-directing in their own development.” *Id.* at 28, 85; *see also* Lee S. Shulman, *Pedagogies of Uncertainty*, *LIBERAL EDUC.*, Spring 2005, <https://www.aacu.org/publications-research/periodicals/pedagogies-uncertainty>. In the context of the Carnegie Foundation for the Advancement of Teaching's long-term program of research on how professionals are educated (Sullivan et al., *EDUCATING LAWYERS*, *supra*, was one volume in this series on professional education), Shulman observed that:

a professional's work . . . is also characterized by conditions of inherent and unavoidable uncertainty. Professionals rarely can employ simple algorithms or protocols of practice in performing their services. How then does a professional adapt to new and uncertain circumstances? She exercises

**Paying attention in the present moment.** We spend so much of our time living in our own heads, especially as lawyers, that we actually miss a lot of what is happening right now around us. Without even intending to, our minds constantly ruminate on what happened in our past—yesterday, last week, or years ago—which can eventually spiral us down into depression. Or our minds can raise continual fears about the future—deadlines, client or colleague demands, or family worries—so that we live in states of perpetual stress and anxiety. Without realizing it, we can become captive to our “monkey mind”<sup>60</sup> that leaps from thought to thought, sometimes reliving past events or imagining future ones, and resting anywhere but in the present moment. That results in a lot of distracted and wasted energy.

Mindfulness practice is a way to become aware of our life in the present, moment to moment. A lawyer who is not fully present in a client meeting or a negotiation can miss important cues or information relevant to professional representation. A law student distracted by texts while studying or by the Internet in class can miss critical points for success on exams. And if lawyers and law students allow their minds to be distracted by work and school concerns when they are home with friends or family, they have lost real-time opportunities to strengthen some of the most fulfilling relationships in their lives. Although the present moment is sometimes difficult, it is really all we have; if we miss it, we are missing our lives.

**Paying attention nonjudgmentally.** Law school teaches us to think like lawyers: analyze and critique everything, find flaws in reasoning, and make counterarguments. Those skills feed our naturally judging human mind, which endlessly makes judgments about what we like or don't like in nearly everything: the weather, this person, that food, this music, and so on. Yet our likes and dislikes are simply judgments, not facts. The more negative judgments we accumulate in our minds over time, the unhappier we become—particularly when they are turned inward in negative self-criticism. Mindfulness practice helps us to cultivate curiosity, compassion, and a discerning, rather than judging, mind.

**Paying attention on purpose.** We tend to become hijacked or captivated by our distracted thoughts and negative judgments, which then drive us crazy, interrupt our sleep, and do not serve much useful purpose. Yet they do contribute deeply to our sense of identity, and thus they can be hard to let go. Mindfulness offers a way to learn to let go of our thoughts, negative judgments, and other self-defeating habits of mind. It substitutes healthy, intentional coping strategies for

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judgment. One might therefore say that professional education is about developing pedagogies to link ideas, practices, and values under conditions of inherent uncertainty that necessitate not only judgment in order to act, but also cognizance of the consequences of one's action.”

Shulman, *supra*.

60. PAUL VERHAEGHEN, PRESENCE: HOW MINDFULNESS AND MEDITATION SHAPE YOUR BRAIN, MIND, AND LIFE 4–5 (2017) (discussing the restless human mind that “flits from association to association” and observing that “Buddhist teachers call this ‘monkey mind’—just like a monkey swings from one branch to the next, lets go, then grabs another branch, lets go again and grasps for another branch, and so on, our minds tend to just go with whatever mental flow is flowing.” (citation omitted)). Many contemporary, secular mindfulness practices trace their historical roots to Buddhist traditions. *Id.* at 6–7.

maladaptive ones that give only temporary relief and can lead to substance abuse and other destructive behaviors.

**Awareness, cultivated in a sustained and particular way.** There are many kinds of mindfulness practices that cultivate present-moment awareness. They often use the breath as a focus of concentration. Repeatedly bringing the mind's focus back to the breath when thoughts, emotions, and bodily sensations inevitably arise during meditation promotes the skill of being nonjudgmentally aware of them when they inevitably arise during everyday life. One informal practice fosters the habit to **STOP** in stressful or emotional situations: **Stop**; **Take a breath**; **Observe** what is happening in your body, your feelings, and your thoughts; and **Proceed** when you have gained the awareness to understand what is going on in your own mind.<sup>61</sup> Learning to STOP allows us to become less automatically and mindlessly reactive to people and events, and instead to be more thoughtfully and appropriately responsive to them. We cannot control other people—we can control only our own attitudes, behaviors, and responses.

#### IV. HOW DO YOU PRACTICE MINDFULNESS?

Mindfulness can be practiced in many ways: sitting meditations, mindful body scans, mindful yoga, mindful eating, mindful walking, and compassion exercises, to name a few. Mindfulness can be practiced in time intervals of a few minutes or much longer at the choice of the practitioner.

Three common forms of meditation are usually part of mindfulness training and have been scientifically studied to understand their potential benefits and the physiological changes in brain structure and function that occur during and after meditation.<sup>62</sup> Each of these meditation practices begins with the meditator taking a comfortable position, usually a sitting position in a posture that is upright yet relaxed, in a quiet space, with eyes closed or lowered. The following provides a brief introduction to how each kind of meditation is practiced.

##### A. Focused-Attention Meditation

In focused-attention meditation, the meditator focuses on one thing, usually the breath, observing the process of inhaling and exhaling and the physical sensations that breathing causes in the body (such as the expansion and contraction of the belly, or the flow of air in the nostrils or at the back of the throat). The idea is not to control the breath, but to control the focus. When the mind wanders, as it inevitably and repeatedly will do, the meditator notes that the mind has wandered and gently brings the attention back to the breath. The meditator is encouraged not

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61. Leonard L. Riskin & Rachel Wohl, *Mindfulness in the Heat of Conflict: Taking STOCK*, 21 HARV. NEGOT. L. REV. 121, 144–51 (2015) (describing the STOP tool and elaborating two additional tools: STOPSi (Stop, Take a breath, Observe (body sensations, emotions, thoughts), Proceed to Set a clear and simple Intention) and STOCK (Stop, Take a breath, Observe (body sensations, thoughts, emotions), Consider (have you been following your intention or want to change it? What next?), and Keep going)).

62. Matthieu Ricard, Antoine Lutz & Richard J. Davidson, *Mind of the Meditator*, 311 SCI. AM. 38, 40 (2014).



to follow the mind where it wandered or to cast negative self-judgments for having lost focus, but rather to simply note that the mind has wandered and to refocus on the breath. This process is repeated many times throughout the meditation, with the meditator continually, purposefully, and nonjudgmentally returning to the present experience of the breath. This practice allows the meditator to develop the capacity to remain focused while also remaining alert (but nonreactive) to distractions.<sup>63</sup>

### ***B. Open-Monitoring Meditation***

In open-monitoring meditation, the meditator engages in detached observation of his or her internal thoughts, emotions, physical sensations in the body, and external surroundings—e.g., sounds, temperature, aromas—in the present moment.<sup>64</sup> The meditator nonjudgmentally observes these things as they naturally come into awareness, whether they are pleasant or unpleasant experiences. The meditator does not focus on any particular object of awareness or try to control, like, dislike, or otherwise react to or engage with the experience: he or she just observes it.<sup>65</sup> When the mind inevitably wanders, the meditator repeatedly and gently brings the attention back to open monitoring. This practice “tries to cultivate a less emotionally reactive awareness to emotions, thoughts, and sensations occurring in the present moment to prevent them from spiraling out of control and creating mental distress.”<sup>66</sup>

### ***C. Loving-Kindness (Compassion) Meditation***

In loving-kindness meditation, the meditator repeats a series of compassionate wishes for the well-being of oneself and others. A typical loving-kindness sequence might be to bring a well-loved person into one’s mind (visualization), and then repeat silently to oneself:

- May you be happy.
- May you be healthy.
- May you be safe.
- May you live your life with ease.<sup>67</sup>

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63. See generally GUNARATANA, MINDFULNESS IN PLAIN ENGLISH, *supra* note 56, at 39–55; RICK HANSON WITH RICHARD MENDIUS, BUDDHA’S BRAIN: THE PRACTICAL NEUROSCIENCE OF HAPPINESS, LOVE, AND WISDOM 86–87, 200–03 (2009); JON KABAT-ZINN, FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS 44–53 (2015); VERHAEGHEN, *supra* note 60, at 6–8.

64. Ricard et al., *supra* note 62, at 41, 42–43.

65. In the Mindfulness-Based Stress Reduction (MBSR) program founded by Jon Kabat-Zinn, this kind of open-monitoring meditation is known as “choiceless awareness” or “open presence,” KABAT-ZINN, FULL CATASTROPHE LIVING, *supra* note 63, at 69, 71, 74, 383.

66. Ricard et al., *supra* note 62, at 42.

67. See HANSON WITH MENDIUS, *supra* note 63, at 158–60 (utilizing a slightly different order of these wishes). Meditators may modify these phrasings and the order of the phrasings as suits their needs. For a more extended discussion of compassion meditations, see generally BHANTE GUNARATANA, LOVING-KINDNESS IN PLAIN ENGLISH: THE PRACTICE OF METTA 7–18 (2017).

This sequence is then repeated with visualizing and giving these same well wishes to one's benefactors (for example, mentors or teachers), other family and friends (about whom one feels close and positive emotions), acquaintances and strangers (about whom one feels neutral), people one finds difficult or challenging to deal with, and ultimately all beings.<sup>68</sup> Compassion for oneself is an important trait to develop as well, and a loving-kindness meditation may begin with these well wishes for oneself.

This form of meditation can cultivate stronger feelings of altruism and benevolence to others and less harsh, self-critical judgments. One study found "that teaching loving-kindness to people particularly prone to self-criticism both lessened those harsh thoughts and increased their self-compassion."<sup>69</sup> Just as the previous two meditations train the mind, loving-kindness meditations train the heart.

#### ***D. Short Mindfulness Exercises Specifically for Lawyers***

University of Miami Law Professor Scott Rogers has written books specifically for lawyers and law students to introduce them to mindfulness and its potential to improve well-being in the legal profession. In his mindfulness primer for lawyers (aptly named the "Six-Minute Solution" for devising meditations that can be done in the canonical six-minute, billable-hour increment), Rogers offers mindfulness insights and tips for greater productivity (22 mindfulness insights to enhance clarity, performance, and well-being), relief from stress (three steps for finding balance during challenging times), and peak performance (four contemplative practices to quiet the mind).<sup>70</sup>

### **V. WHAT ARE THE BENEFITS OF MINDFULNESS?**

There have been a multitude of scientific studies assessing the cognitive, psychological, emotional, and physical benefits of mindfulness.<sup>71</sup> The purported

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68. KABAT-ZINN, FULL CATASTROPHE LIVING, *supra* note 63, at 216.

69. DANIEL GOLEMAN & RICHARD J. DAVIDSON, ALTERED TRAITS: SCIENCE REVEALS HOW MEDITATION CHANGES YOUR MIND, BRAIN, AND BODY 105 (2017).

70. SCOTT L. ROGERS, THE SIX-MINUTE SOLUTION: A MINDFULNESS PRIMER FOR LAWYERS (2009). Rogers has written another book specifically for law students: SCOTT ROGERS, MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL (2009). The website for the mindfulness program at the University of Miami Law School hosts a wealth of resources and information on mindfulness in law. See MIAMI L. MINDFULNESS L. PROGRAM, <http://www.miamimindfulness.org/> (last visited July 30, 2018). Rogers has also developed websites for specific audiences. See, e.g., MINDFUL L., <http://themindfullawyer.com/> (last visited July 27, 2018); MINDFUL JUDGE, <http://themindfuljudge.com/> (last visited July 27, 2018); MINDFUL L. STUDENT, <http://themindfullawstudent.com/> (last visited July 27, 2018); MINDFUL L. PROFESSOR, <http://themindfullawprofessor.com/> (last visited July 27, 2018).

71. See, e.g., Amishi P. Jha, *Being in the Now*, SCI. AM. MIND, March/April 2013, at 26, <https://www.scientificamerican.com/article/mindfulness-can-improve-your-attention-health/>. For a comprehensive, highly readable, and very well-researched book that collects and reviews many of these studies, including meta-analyses of the studies, see VERHAEGHEN, *supra* note 60. See also SHANIDA NATARAJA, THE BLISSFUL BRAIN: NEUROSCIENCE AND PROOF OF THE POWER OF MEDITATION (2008) (additionally reviewing the scientific literature).

benefits include a wide range of improvements in both physical and mental health.<sup>72</sup> Part V explores more deeply several of the key benefits, referred to above in the National Task Force Report, that may be particularly relevant for lawyers and law students.

#### A. Attention Regulation

Studies have shown that meditators have an enhanced ability to remain vigilant to distractions and return more easily to focused attention after the mind wanders.<sup>73</sup> Results of one meta-analysis of mindfulness meditation suggested that the average mindfulness meditator had stronger attention skills than 73% of nonmeditators.<sup>74</sup> An encouraging conclusion from a review of the studies is that not much meditation practice is needed to increase concentration: “Even 20 to 40 hours or so of practice results in measurable changes in control over attention.”<sup>75</sup>

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72. Christina Congleton, Britta K. Hölzel & Sara W. Lazar, *Mindfulness Can Literally Change Your Brain*, in MINDFULNESS: HBR EMOTIONAL INTELLIGENCE SERIES 32 (2017) (“Neuroscientists have also shown that practicing mindfulness affects brain areas related to perception, body awareness, pain tolerance, emotion regulation, introspection, complex thinking, and sense of self.”); NATARAJA, *supra* note 71, at 207 (concluding that regular meditation produces measurable health benefits, including stress reduction, improved cardiovascular health and immune function, and improved coping strategies in the face of disease, as well as significant cognitive and psychological changes and the personal development of the practitioner); VERHAEGHEN, *supra* note 60, at 160–61 (reviewing studies that show “significant and beneficial effects on control over attention, attentional blink, sustained attention, proprioception for sexual arousal, working memory, perceived stress, immune functioning, general well-being, state anxiety, trait anxiety, depressed mood, negative emotions, positive emotions, emotion regulation, rumination, negative personality traits, trait mindfulness, self-concept, empathy and compassion”); *see also* John Paul Minda, Jeena Cho, Emily Grace Nielsen & Mingxia Zhang, *Mindfulness and Legal Practice: A Preliminary Study of the Effects of Mindfulness Meditation and Stress Reduction in Lawyers* 4 (July 19, 2017), <https://psyarxiv.com/6zs5g/> (citing studies that suggest that mindfulness reduces stress and anxiety, boosts immune function, enhances the effectiveness of phototherapy as a treatment for psoriasis, is useful in the management of symptoms associated with depression and post-traumatic stress disorder, and is associated with improved everyday cognitive functioning, improved attention, cognitive flexibility, insight problem-solving ability, and general decision-making).

73. Ricard et al., *supra* note 62; *see* Jha, *supra* note 71.

74. VERHAEGHEN, *supra* note 60, at 96–105 (analyzing range of studies that investigated the effect of meditation on three aspects of attention: (1) noticing and alerting (detecting when the mind wanders); (2) controlling attention (returning focus to where it should be); and (3) sustaining a stabilizing attention (keeping awareness focused on what it needs to be focused on)).

75. *Id.* at 98. This author also observes:

[o]ne conclusion is that some of the effects of mindfulness and meditation on attention may be due to changes in effort, or the willingness to invest effort, rather than to changes in attention per se. You could also, of course, wonder if this distinction is truly important in day-to-day life: A change in your underlying attitude to life, especially an increased willingness to meet challenges with a bit more energy, seems like a vital part of healthy daily functioning.

One study set out to determine how often people's minds wander.<sup>76</sup> Researchers developed an iPhone app that contacted participants randomly during the day and asked them to rate how happy they were right then, what they were doing (out of 22 activities) right then, whether they were thinking about something other than what they were currently doing, and whether what they were thinking about was pleasant or unpleasant.<sup>77</sup> The researchers found that mind wandering was very common, occurring in approximately 47% of the samples overall and in at least 30% of the samples taken during every activity except making love.<sup>78</sup> They also found that people were less happy when their minds were wandering during all activities, and that what people were thinking was a better predictor of their happiness than what they were doing.<sup>79</sup>

As many know who have spent 15 minutes staring at a page in a book or on a screen and then realized with frustration that they have no idea what it said, a wandering mind is an unhappy mind, which is the title of this published study. The study confirms that people are happier when they can be fully attentive to what they are doing in the present moment and when their minds are fully absorbed by the present-moment experience: "The ability to think about what is not happening is a cognitive achievement that comes at an emotional cost."<sup>80</sup>

For lawyers, improving one's ability to focus attention and ignore distractions, even in the midst of the numerous daily and competing demands for time and attention, can improve one's efficiency and productivity in work and reduce the stress associated with seemingly always having too much to do and too little time to do it. Better control over one's attentional focus can improve the ability to serial-task (prioritize and focus on one thing at a time), and decrease self-defeating attempts to multitask, which research has shown is counterproductive to efficiency.<sup>81</sup> Indeed, compelling research has shown that multitasking is a myth: "[T]he brain does not 'multitask' but rather switches rapidly from one task (*my work*) to others (*all those funny videos, friends' updates, urgent texts . . .*). . . . And following every such switch, when our attention returns to the original task, its

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*Id.* at 105.

76. Matthew A. Killingsworth & Daniel T. Gilbert, *A Wandering Mind Is an Unhappy Mind*, 330 SCIENCE 932, 932 (Nov. 12, 2010), [http://www.danielgilbert.com/KILLINGSWORTH%20&%20GILBERT%20\(2010\).pdf](http://www.danielgilbert.com/KILLINGSWORTH%20&%20GILBERT%20(2010).pdf).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Shailini Jandial George, *The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness*, 53 DUQ. U. L. REV. 215, 218 (2015).

Students often believe they are master multitaskers. Research shows, however, that "heavy media multitaskers . . . [are] suckers for irrelevancy . . . [because] everything distracts them." While many think they can simultaneously attend to many things at once, research shows this is not true. Rather than simultaneously processing all the information, the brain actually toggles among tasks, "leaking a little mental efficiency with every switch."

*Id.* (citations omitted).

strength has been appreciably diminished.”<sup>82</sup> By contrast, a “serial tasker is present in the moment, listens actively to others, maintains a working flow on projects, and ignores the false sense of urgency that multi-tasking creates.”<sup>83</sup>

### ***B. Stress Reduction***

A recent review of numerous scientific studies on the effects of mindfulness training concluded, “[m]indfulness training clearly leads to stress reduction.”<sup>84</sup> The author (psychology professor Paul Verhaeghen at the Georgia Institute of Technology) suggested that the studies implied that the average mindfulness-trained participant is less stressed than 64% of his or her counterparts who had not undergone training.<sup>85</sup> The author also suggested that there is some evidence that mindfulness training can boost immune functioning, perhaps by making people happier.<sup>86</sup>

### ***C. Emotion Regulation***

According to Verhaeghen, many of the published studies on the effects of meditation on psychology are not scientifically rigorous enough to draw valid conclusions.<sup>87</sup> However, based on a range of studies that compares the following measures of well-being between mindfulness-trained participants and nontrained participants, he does suggest that one could fairly conclude that the average mindfulness-trained meditator:

- had a higher perceived quality of life than 70% of the nonmeditators;
- felt less temporary anxiety due to stressful circumstances than 75% of the nontrained study participants;
- experienced less trait (or day-to-day) anxiety than 73% of the general public;
- felt less depressed than 63% of the general public;
- experienced fewer negative emotions than 66% of nonparticipants and more positive emotions than 70% of nonparticipants;
- was better at emotion regulation—i.e., the ability to keep emotions in check as required by one’s personal goals or the situation—than 63% of nontrained individuals;

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82. GOLEMAN & DAVIDSON, *supra* note 69, at 137 (italics in original).

83. Debra Austin & Rob Durr, *Emotion Regulation for Lawyers: A Mind Is a Challenging Thing to Tame*, 16 WYO. L. REV. 387, 406 (2016).

84. VERHAEGHEN, *supra* note 60, at 122.

85. *Id.*

86. *Id.* at 124.

87. *Id.* at 126–27 (observing that the largest meta-analysis on the effects of meditation on psychology eliminated most of the published studies due to methodological concerns, and concluding that “[t]hree quarters of the published studies in the field simply don’t meet the basic standard that would allow for scientifically valid conclusions”).

- ruminated—i.e., engaged in rehashing the same, usually negative, thoughts over and over, often with a sense of no control over them—less often or less vigorously than 65% of nonmeditators;
- was more emotionally stable—i.e., had the ability to maintain emotional balance and to not be rattled or shaken by events—and less easily ruffled than 60% of the general public.<sup>88</sup>

A common thread in the studies reviewed by Verhaeghen was a lowering of reactivity to the stressors of daily life through an increase in open-mindedness and the ability to take a nonjudgmental stance toward them.<sup>89</sup> By encouraging practitioners to take a nonjudgmental stance toward their thoughts, emotions, physical sensations, and surroundings, mindfulness-meditation training encourages this cultivation of an open mind (sometimes called a “beginner’s mind”).<sup>90</sup> An open mind allows the practitioner to experience sensations and surroundings—as if for the first time, without preconceived notions as to how things should be—and to explore with curiosity simply how things are. “In this open mind there is space for new ideas, new ways of thinking and behaving; a readiness to see things from a different, less restrictive perspective.”<sup>91</sup> Recent research also suggests that mindfulness improves rational decision-making and reduces various cognitive distortions, including implicit bias.<sup>92</sup>

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88. *Id.* at 127–30. It is important to mention that Verhaeghen’s review of these various studies led him to draw conclusions about the “average meditator,” noting that “there’s no guarantee that every meditator will experience each [or even any] of these effects.” *Id.* at 135. He also highlights other limitations on the findings of the studies he reviews: most of the studies were small (ranging from 8 to 140 people in the meditator groups, with a mean of 27 people per study); most used a passive rather than an active control group (meaning that the former are useful in seeing how the mindful-meditating life compares to life as usual, but not in comparing how mindfulness compares to another active intervention, such as relaxation training, exercise, counseling, cognitive or behavioral therapy, or even a placebo). *Id.* at 136–37. For example, in meta-analyses of the effects of mindfulness on clinical populations—i.e., people diagnosed as suffering from clinical conditions, such as depression, anxiety, or chronic pain—rather than the general public, the studies show that for many mental-health conditions (except depression) mindfulness does not work better or worse than the standard treatment for the condition. So while mindfulness may not be a therapeutic “magic bullet,” it seems to be a viable alternative to traditional therapies without their attendant negative side effects. *Id.* at 146–48. Nataraja also acknowledges the limitations in drawing firm conclusions from the scientific research, observing that study participants may vary in their compliance with the meditation program being studied; recruitment of study participants—i.e., general population vs. clinical populations—can result in diverse study populations that make drawing valid comparisons difficult; the methodologies used in the studies may not be scientifically rigorous; and long-term studies are difficult and costly to run. NATARAJA, *supra* note 71, at 186–87.

89. VERHAEGHEN, *supra* note 60, at 143.

90. KABAT-ZINN, MINDFULNESS FOR BEGINNERS, *supra* note 56, at 9–10.

91. NATARAJA, *supra* note 71, at 196.

92. Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUS. L. REV. 63, 79–100 (2017).

By promoting open-mindedness and curiosity, mindfulness training can also promote adaptability and improve resilience. “As awareness of what is happening in one’s surroundings grows, normal daily irritants—an angry colleague at work, a worried child at home—become less disruptive, and a sense of psychological well-being develops.”<sup>93</sup>

***D. Awareness of the Body: Impact on Emotional Awareness and Response to Pain***

Engaging in a quiet scan of present-moment sensations throughout one’s body is an often-used mindfulness practice. The body can be a treasure trove of physical sensations that can lead to increased awareness of one’s emotions and one’s world. Tuning into the body and its physical sensations can be a good guide to one’s emotional states. In this way, “the body can serve as both a resource and a trustworthy partner in life. Knowing your body more intimately, and in an on-going way, supports your capacity to meet all of your moments with more wisdom and compassion, including the anxious ones.”<sup>94</sup>

One study examined self-reported body awareness in daily life and found that mindfulness-trained participants differed from control participants in their awarenesses of what is happening inside their bodies, often with an “emotional tinge.”<sup>95</sup> After a three-month mindfulness program, the trained group changed more than the control group in answering a body-awareness questionnaire along several dimensions:

- self-regulation—e.g., “When I feel overwhelmed I can find a calm place inside”;
- attention regulation—e.g., “I can refocus my attention from thinking to sensing my body”;
- body listening—e.g., “I listen for information from my body about my emotional state”;
- body trusting—e.g., “I feel my body is a safe place”;
- emotional awareness—e.g., “I notice how my body changes when I am angry.”<sup>96</sup>

This connection between body awareness and emotional awareness may suggest an increased integration of the two among meditators. One study led Verhaeghen to conclude that “meditators seem to be particularly good at tapping into the physiological markers of their emotions.”<sup>97</sup>

Caring for your body is essential for health and longevity, and mindfulness of the body can help you learn what it needs (or doesn’t need) in order to thrive:

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93. Ricard et al., *supra* note 62, at 42–43.

94. BOB STAHL, FLORENCE MELEO-MEYER & LYNN KOERBEL, A MINDFULNESS-BASED STRESS REDUCTION WORKBOOK FOR ANXIETY 58 (2014).

95. VERHAEGHEN, *supra* note 60, at 107.

96. *Id.*

97. *Id.* at 108.

Through mindfulness of the body, you can begin to understand how stress and anxiety affect you, and also learn how to live better even with physical pain and illness. . . . The body has its own wisdom, and if you listen, it can communicate where physical tension, thoughts, and emotions lie within your body.<sup>98</sup>

Mindfulness has also been shown to alleviate the experience of physical pain. Physical pain and illness are things everyone experiences; how you relate to your pain or illness (even if chronic), however, can affect how much you suffer from these conditions. A review of several studies on the impact of meditation on pain led Verhaeghen to conclude “that meditation makes painful experiences less unpleasant . . . . This suggests that the main effect of the meditative experience on pain is not that it removes or dulls the ache. Rather, meditation makes the experience a tad more bearable.”<sup>99</sup> Another author put it this way: “Even in times when you can’t change the physical sensations of pain, you can change your emotional responses to them and thereby reduce your suffering. In other words, physical pain is a reality, but suffering is optional. . . . [Y]our emotional response to pain is in your hands.”<sup>100</sup>

#### *E. Empathy and Compassion*

While there is not a lot of research on the effect of meditation practice on interpersonal skills and attitudes, one study of couples undergoing mindfulness training found that mindfulness had a positive impact on relationship satisfaction and closeness and made the couples more accepting of their partner. This led Verhaeghen to conclude that mindfulness-trained couples had a stronger relationship than 69% of nonmeditating couples.<sup>101</sup>

It is possible that mindfulness could improve interpersonal and professional relationships by fostering empathy and compassion. Research suggests that mindfulness develops “an enhanced ability to share the feelings of others without reporting any sign of becoming emotionally overwhelmed.”<sup>102</sup> The results of two studies on empathy led Verhaeghen to infer that the average meditator was more empathetic than 79% of nonmeditators.<sup>103</sup>

Of course, one can experience too much empathy and feel overwhelmed by one’s own distress at observing the suffering of others. Some people, particularly lawyers and others in service professions, can eventually suffer from “compassion fatigue.”<sup>104</sup> Compassion can be healthy and beneficial when it increases one’s

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98. BOB STAHL & ELISHA GOLDSTEIN, *A MINDFULNESS-BASED STRESS REDUCTION WORKBOOK* 65–66 (2010).

99. VERHAEGHEN, *supra* note 60, at 60.

100. STAHL & GOLDSTEIN, *supra* note 98, at 71.

101. VERHAEGHEN, *supra* note 60, at 131–32.

102. Ricard et al., *supra* note 62, at 44.

103. VERHAEGHEN, *supra* note 60, at 132.

104. *Compassion Fatigue*, A.B.A.,

[https://www.americanbar.org/groups/lawyer\\_assistance/resources/compassion\\_fatigue.html](https://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html) (last visited July 28, 2018) (“Compassion fatigue is the cumulative physical, emotional and



motivation to relieve another's suffering without being overwhelmed by it. Some meditation practices are intended specifically to foster healthy compassion, such as the loving-kindness meditation described earlier in this Article. Verhaeghen reviewed several studies looking at the effect of compassion training on measures of compassion, which indicated that the average compassion-trained meditator is more compassionate than 65% of nonmeditators.<sup>105</sup>

#### *F. Change in Perspective on the Self*

To a greater or lesser extent, we all have blind spots about ourselves and our behaviors. In the proverbial narrative film that we each run continually in our minds about ourselves, we are the hero or heroine, with everyone else playing supporting roles in our life's story. Mindfulness can counteract this human tendency toward self-focus and thereby improve the capacity for honest self-awareness.

Researchers have termed the areas of the brain that activate during mind wandering as the brain's "default mode network."<sup>106</sup> When the mind wanders, it typically focuses on the self:

In short, our mind wanders mostly to something about ourselves—*my thoughts, my emotions, my relationships, who liked my new post on my Facebook page*—all the minutiae of our life story. By framing every event in how it impacts ourselves, the default mode makes each of us the center of the universe as we know it. Those reveries knit together our sense of "self" from the fragmentary memories, hopes, dreams, plans, and so on that center on I, me, and mine. Our default mode continually rescripts a movie where each of us stars, replaying particularly favorite or upsetting scenes over and over.<sup>107</sup>

As previously noted, a wandering mind is an unhappy mind.<sup>108</sup> Fully focusing on a task or an object of attention, such as the breath, during meditation can inhibit the default-mode network in the brain, thereby "quieting the monkey mind—the incessant self-focused chatter that so often fills our minds"<sup>109</sup> and putting us in a happier frame of mind. Several studies suggest that mindfulness practices can "shift the mind from a narrative mode of viewing the self, in which the central character in the story is you, to a more experiential view, in which you observe the unfolding of your thoughts, feelings and sensations over time."<sup>110</sup>

Verhaeghen reviewed several studies that looked at meditation and different aspects of self-concept, including self-acceptance, self-compassion, and a sense of being in control of one's life. Together, the studies suggest that the average

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psychological effect of exposure to traumatic stories or events when working in a helping capacity, combined with the strain and stress of everyday life.").

105. VERHAEGHEN, *supra* note 60, at 133.

106. GOLEMAN & DAVIDSON, *supra* note 69, at 150.

107. *Id.* at 151.

108. *See supra* notes 76–80 and accompanying text.

109. GOLEMAN & DAVIDSON, *supra* note 69, at 152.

110. Jha, *supra* note 71, at 33.

meditator has a more positive and stronger self-concept than 75% of nonmeditators.<sup>111</sup>

Nataraja has also written about the impact of meditation on one's perception of oneself. Regular meditators have reported an improved and expanded sense of identity, as well as an increased self-acceptance and decreased tendency to attribute self-blame. "This often also translates into an increased acceptance of other people and their eccentricities, which can improve interpersonal relationships."<sup>112</sup>

By taming the self-critical, judgmental mind that is always (and often unhappily) comparing oneself to others, mindfulness can foster self-awareness of one's core values and priorities. In turn, this can help people to deemphasize extrinsic motivations for their personal effort (like money or grades) and foster their intrinsic motivations by aligning their actions with their values, thus allowing them to bring more passion and personal commitment to their chosen work. A recent study on what makes lawyers happy reported:

[T]hese data indicate that well-being is substantially impaired when law graduates emphasize external over internal factors in their career choices . . . .

. . . .

. . . These data consistently indicate that a happy life as a lawyer is much less about grades, affluence, and prestige than about finding work that is interesting, engaging, personally meaningful, and focused on providing needed help to others. . . .

. . . .

. . . Psychological factors related to self, others, meaningful and personally engaging work, and supportive work supervision were far more predictive of well-being than external "success" factors relating to competitive standing, honors, or financial rewards.<sup>113</sup>

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111. VERHAEGHEN, *supra* note 60, at 131.

112. NATARAJA, *supra* note 71, at 178 (also noting that experienced meditators report fewer bouts of irritability and impatience, and fewer emotional outbursts).

113. Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 580, 592, 626 (2015) ("External factors, which are often given the most attention and concern among law students and lawyers (factors oriented towards money and status—such as earnings, partnership in a law firm, law school debt, class rank, law review membership, and *U.S. News & World Report's* law school rankings), showed nil to small associations with lawyer well-being. . . . Intrinsic values include self-understanding and improvement, positive interpersonal relationships, helping others, and building community."). Similarly, a recent study on stress hardiness among lawyers found that maintaining a sense of control, a sense of purpose, and cognitive flexibility were significantly correlated with stress hardiness. Pamela Bucy Pierson, Ashley Hamilton, Michael Pepper & Megan Root, *Stress Hardiness and Lawyers*, 42 J. LEGAL PROF. 1 (2017).

Two other studies have “found that people who were mindful were more likely to care about such internal rewards as integrity, moral identity, and honesty, instead of such external rewards as monetary gains.”<sup>114</sup>

Developing the capacities for self-reflection and self-awareness can improve one’s self-confidence and willingness to pursue the careers and life paths that most deeply resonate with the individual. Self-reflection skills are particularly important for law students and young attorneys to learn to develop, as they are faced with a bewildering set of choices of settings and subject-matter fields for their employment. Helping them to tap into their internal resources and values can help develop their professional identities and identify the professional attributes and traits that they most want to adopt and exemplify in the practice of law.

The most thoroughgoing critique of legal education in recent years, often referred to as the *Carnegie Report*, urges the legal academy to be more explicit and intentional in fostering students’ development of professional identity and sense of professional purpose during their time in law school.<sup>115</sup> Law professors Scott Rogers and Jan Jacobowitz have written a clear guidebook to help law faculty to do just that—by weaving many mindfulness exercises throughout a course on professional ethics and responsibility.<sup>116</sup> The authors of a recent study on what makes lawyers happy also have suggested that promotion of the intrinsic values that are positive factors for lawyer well-being could have positive implications for attorney professionalism and ethics as well.<sup>117</sup>

#### ***G. Application of Benefits to Lawyers and Law Students***

As an early advocate of incorporating mindfulness practice in the legal profession, Professor Leonard Riskin has identified the potential benefits for lawyers and law students as first, helping them to feel better (enhancing their

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114. Huang, *supra* note 92, at 107.

115. SULLIVAN ET AL., *supra* note 59, at 126–61.

116. SCOTT L. ROGERS & JAN L. JACOBOWITZ, MINDFULNESS AND PROFESSIONAL RESPONSIBILITY: A GUIDEBOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM (2012); *see also* Scott L. Rogers, *The Role of Mindfulness in the Ongoing Evolution of Legal Education*, 36 U. ARK. L. REV. 387, 403–11 (2014) (discussing the integration of mindfulness, professional responsibility, and ethics in the legal-education curriculum); Scott L. Rogers & Jan L. Jacobowitz, *Mindful Ethics and the Cultivation of Concentration*, 15 NEV. L. J. 730, 731 (2015) (developing “the thesis that mindfulness and ethics enjoy a symbiotic connection, such that an attorney’s deliberate attentiveness to the rules of professional conduct as a personal ethic can help cultivate a mindfulness practice”).

117. Krieger & Sheldon, *supra* note 113, at 581–82 (“Intrinsic values include self-understanding and improvement, positive interpersonal relationships, helping others, and building community; such values would logically lead to introspection, honesty, cooperation, respect, and altruistic behavior. These values, then, would tend to promote integrity, candor, dedication to a client or cause, and respectful interactions with clients, opposing parties, and others, thus elevating an attorney’s ethical and professional conduct.”); *see also* Huang, *supra* note 92, at 100–26 (analyzing how practicing mindfulness could improve ethical reasoning and conduct). *See generally* Peter H. Huang, *How Improving Decision-Making and Mindfulness Can Improve Legal Ethics and Professionalism*, 21 J. L., BUS. & ETHICS 35 (2015).

capacities to relax and deal with stress and anxiety) and to perform lawyering tasks better (largely by increasing emotional-intelligence competencies), and second, enabling them to listen and negotiate better (by learning to observe limiting mindsets and habitual reactions without getting attached to them).<sup>118</sup> There is now a growing literature on the benefits of mindfulness practice specifically in the context of the legal profession and legal education,<sup>119</sup> a few aspects of which are explored in this Section.

**Increased self-awareness and ability to remain balanced.** Before much of the recent scientific research on the effects of mindfulness, attorney and *ABA Journal* editor Steven Keeva advocated mindfulness for lawyers. He conducted numerous interviews with attorneys on various practices they adopted to improve their well-being and balance in their lives, and in 1999 the ABA published his seminal work on finding satisfaction in the practice of law.<sup>120</sup> With respect to mindfulness, he observed that it can foster one's ability to deal with stressful situations with greater calm, to stay balanced, and to be creative and confident in responding: "No longer on autopilot, you can really look at what is important to you and realize that, although much of what happens to you is beyond your control, you have enormous power over how you respond to, and deal with, whatever comes your way."<sup>121</sup> He cited additional benefits from mindfulness for the practice of law by helping lawyers to do the following: (1) be aware of their own biases and prejudices and how they get in the way of effective work; (2) see the potential even in difficult moments, and thereby develop an ability to transform superficial, mindless reactions into opportunities to learn what is going on at a deeper level; and (3) be aware of the

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118. 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, 45–57 (2002).

119. See, e.g., JEREMY D. FOGEL, MINDFULNESS AND JUDGING (2016), <https://www.fjc.gov/sites/default/files/2016/Mindfulness%20and%20Judging.pdf> (describing the benefits of mindfulness for the judiciary, including allowing a thoughtful approach to repetitive tasks as a way of limiting unconscious assumptions and maintaining a thoughtful and respectful judicial demeanor); Jan L. Jacobowitz, *The Benefits of Mindfulness for Litigators*, 39 NO. 2 LITIG. 27, 27–28 (2013) (observing that "[w]hen attorneys practice mindfulness, the experience they gain by noticing their minds moving off into distraction, and returning their attention to their breath, makes them better equipped to deal with the unexpected—because they catch the thoughts and feelings that are resisting the moment, and are better equipped to stay on task and respond in proportion to the challenge"); Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. REV. 535, 555–58 (2011) (discussing various benefits for lawyers, including self-support for handling the stresses of legal practice, more effective and ethical lawyering, and better client relations and service). For some recent symposium volumes on mindfulness in the legal profession and legal education, see generally *Special Issue on Mindfulness*, FLA. B. J., April 2016; Symposium, *The Mindful Lawyer*, 61 J. LEGAL EDUC., 634 (2012); Symposium, *Mindfulness, Emotions, and Ethics in Law and Dispute Resolution*, 10 NEV. L.J. 289 (2010).

120. STEVEN KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE (1999).

121. *Id.* at 69.

quality of one's own behavior (including how one is communicating in the moment) so that others' responses become more understandable.<sup>122</sup>

**Recent empirical study on mindfulness and lawyers.** A preliminary investigational study that was recently published online is believed to be the first to examine the possible psychological effects and benefits of a mindfulness and meditation program specifically designed for lawyers.<sup>123</sup> Forty-six attorneys participated in an eight-week, online, modified MBSR-style program that was developed in the book *The Anxious Lawyer*,<sup>124</sup> and they completed preprogram and postprogram questionnaires designed to assess various cognitive, psychological, emotional, and behavioral characteristics.<sup>125</sup> The study reported lower levels of stress, anxiety, and depression among the attorneys after the program: depression scores decreased by 28.84%, anxiety scores decreased by 30.29%, and stress scores decreased by 32.45%.<sup>126</sup>

The attorney participants also reported increased levels of positive mood, resilience, and workplace effectiveness.<sup>127</sup> Based on a comparison of their preprogram and postprogram scores on various measures of "job effectiveness," the study found an overall 6.1% increase in their self-reported job-effectiveness scores.<sup>128</sup> These overall effects did not appear to depend on the amount of time that

122. *Id.* at 69–70; see also Rhonda V. Magee, *The Way of ColorInsight: Understanding Race and Law Effectively Through Mindfulness-Based ColorInsight Practices*, 8 GEO. J.L. & MOD. CRIT. RACE PERSP. 251, 272–78 (2016) (describing the use of mindfulness-based practices to deepen focus and concentration; increase awareness of habits of mind associated with bias; increase capacity for emotion regulation, perspective-taking, and compassion; provide protection from stereotype threat; and offer healing from trauma).

123. Minda et al., *supra* note 72, at 11. The authors acknowledged several other limitations of this preliminary study (including the lack of a control group and the possibility that the self-reported changes were due to "expectancy effects"—participants joined the study because they expected benefits from mindfulness and meditation)—that could be addressed in future research. *Id.* at 12–13.

124. See generally JEENA CHO & KAREN GIFFORD, *THE ANXIOUS LAWYER: AN 8-WEEK GUIDE TO A HAPPIER, SANER LAW PRACTICE USING MEDITATION* (2016).

125. Minda et al., *supra* note 72, at 8–9.

126. *Id.* at 10.

127. *Id.*

128. *Id.* The study's authors candidly acknowledged the limitations of the self-reports on job effectiveness:

The job effectiveness questions were not designed to assess any specific psychological construct and they are not part of a published psychological test. Instead, these items were included for qualitative insight into how participants perceived their own ability to perform on the job. As such, there is no standard way to interpret the results.

*Id.*

Notably, many of the measures used to determine job effectiveness in this study (such as creativity, thoroughness, open-mindedness, interpersonal relations, social astuteness, communication, listening, integrity, motivation, independence, dependability, emotional control, assuming responsibility, seeing "the big picture," productivity, and work-life balance; *id.* at 26–28) are similar to and complementary of the characteristics and qualities

the participants meditated each week, leading the study's authors to suggest that "[w]hat mattered was just that they meditated."<sup>129</sup>

**Mindfulness can promote highly prized professional qualities.** More broadly, mindfulness offers practices that can promote many of the important character and professional traits that have been identified as necessary for successful professional law practice. A recent survey (IAALS study) of over 24,000 lawyers sought to identify the key professional skills, characteristics, and competencies that are considered necessary to have right out of law school, as well as those that are not immediately needed in the short term but must be acquired over time.<sup>130</sup> Many of the top-ten qualities that were considered necessary for a new lawyer's success in the first year of practice (out of the 147 skills, characteristics, and competencies considered as foundations for practice that were surveyed) were ones that can be fostered by mindfulness practices, including the following: honoring commitments, integrity and trustworthiness, treating others with courtesy and respect, listening attentively and respectfully, promptly responding to inquiries and requests, diligence, having a strong work ethic, and putting forth best effort.<sup>131</sup>

Interestingly, specific legal skills typically emphasized in law school were not ranked among the top-ten foundations new lawyers needed for success right out of law school. Other characteristics and competencies that were highly prized (considered either "necessary" in the short term at the outset of practice or "must be acquired" over time) by approximately 90% or more of responding lawyers in the IAALS survey were the following: (1) with respect to emotional and interpersonal intelligence: exhibiting tact and diplomacy; demonstrating tolerance, sensitivity, and compassion; regulating emotions and demonstrating self-control; and understanding and conforming to appropriate appearance and behavior in a range of situations; (2) with respect to passion and ambition: showing initiative and taking ownership; and (3) with respect to professional development: adapting work habits to meet demands and expectations; possessing self-awareness (strengths, weaknesses, boundaries, preferences, sphere of control); and taking individual responsibility for actions and results.<sup>132</sup>

Perhaps most interesting were the rankings of the foundations for practice that were grouped under the "qualities and talents" category in the IAALS study. Some of the characteristics and competencies in this category were noted above as being ranked in the top-ten overall—e.g., integrity and trustworthiness, diligence,

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for professional success that were identified in the IAALS study on the foundations for legal practice, discussed *infra* at notes 130–35 and accompanying text.

129. Minda et al., *supra* note 72, at 12.

130. ALLI GERKMAN & LOGAN CORNETT FOR INS. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 1–5 (2016), [http://iaals.du.edu/sites/default/files/reports/foundations\\_for\\_practice\\_whole\\_lawyer\\_character\\_quotient.pdf](http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf) (hereinafter *IAALS study*).

131. *Id.* at 26.

132. *Id.* at 8–9, 13.

and attention to detail.<sup>133</sup> In addition, over 80% of attorney respondents thought the following qualities and talents were necessary in the short term or must be acquired over time for successful professional practice: big-picture thinking, common sense, confidence, conscientiousness, decisiveness, grit, humility, maturity, patience, perceptiveness, prudence, resourcefulness, and a strong moral compass.<sup>134</sup> Happily—and hopefully by this point, not surprisingly—these key qualities for successful professional practice are among those that mindfulness can promote and strengthen.

## VI. NEUROSCIENCE AND MINDFULNESS

Studies of meditators have shown that meditation not only can offer the benefits described above that improve one's cognitive and emotional functions, but also seemingly can make alterations in the structure and function of the brain itself. Studies have shown an increase in the volume of certain brain areas (prefrontal cortex and insula) and decrease in the activity of the amygdala, which is the brain region involved in emotional reactivity and processing fear.<sup>135</sup> An increase in the

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133. *Id.* at 16, 26.

134. *Id.* at 16.

135. Ricard et al., *supra* note 62, at 41, 43; *see also* Michael Baime, *This Is Your Brain on Mindfulness*, SHAMBALA SUN 47 (July 2011), [http://www.amishi.com/lab/wp-content/uploads/SUN\\_July11\\_Baime.pdf](http://www.amishi.com/lab/wp-content/uploads/SUN_July11_Baime.pdf) (reviewing studies on the cortex—the outermost surface of the brain—and two particular regions of the cortex, the prefrontal cortex and the insula: “The prefrontal cortex manages higher cognitive ‘executive’ functions like planning, decision making, and judgment, and keeps us out of trouble by facilitating socially acceptable behavior . . . . [A different region of the cortex,] the insula, seems to integrate sensation and emotion, and to process social emotions—such as empathy and love.”); HANSON WITH MENDIUS, *supra* note 63, at 49–63 (discussing how the brain, nervous system, endocrine system, and immune system interact under stress conditions and the long-term, adverse physical and mental consequences from continual hyperarousal of the these systems due to stress); *id.* at 85–86 (describing how meditation activates the parasympathetic nervous system and has been shown to result in the following: increases in gray matter in the insula, hippocampus, and prefrontal cortex; reductions in cortical thinning due to aging; improvement in functioning including attention, compassion, and empathy; lifting of mood by increasing activation of the brain's left-front regions; decreases in stress-related cortisol; strengthening of the immune system; helping with a variety of medical conditions (including cardiovascular disease, asthma, type II diabetes, PMS, and chronic pain); and helping with a number of psychological conditions (including insomnia, anxiety, phobias, and eating disorders)); Yi-Yuan Tang, Britta K. Hölzel, and Michael I. Posner, *The Neuroscience of Mindfulness Meditation*, 16 NATURE REVIEWS NEUROSCIENCE, 213, at 215 (observing that scientific studies have found eight brain regions to be consistently altered in meditators, and that future scientific studies “need to replicate the reported findings and begin to unravel how changes in the neural structure relate to changes in well-being and behaviour”); *id.* at 222 (observing that “there is emerging evidence that mindfulness meditation might cause neuroplastic changes in the structure and function of brain regions involved in regulation of attention, emotion, and self-awareness,” and concluding that future research needs to “advance the understanding of the mechanisms of mindfulness meditation in regard to the interactions of complex brain networks, and needs to connect neuroscientific findings with behavioural data”); VERHAEGHEN, *supra* note 60, at 71 (decreases in volume in amygdala were associated with decreases in perceived stress); Kristyna Zapletal, *Neuroscience of*

gray-matter density (gray matter is the part of the brain with the most brain cells) may reflect an increase in connectivity between the cells.<sup>136</sup>

Meditation practice is associated with changes in specific brain areas that involve attention, learning, and the regulation of emotion.<sup>137</sup> Scientist Amishi Jha has focused her research on studying the extent to which mindfulness can enhance attentional performance. Her lab has shown that meditation improves working (or short-term) memory and the ability to resist distraction.<sup>138</sup> For high-stress professions, like the legal profession, she and others have proposed that mindfulness can lead to increased resilience—i.e., the ability to bounce back from stressful events or situations—by strengthening the ability to focus attention and increase working-memory capacity.<sup>139</sup> Others have found that practicing mindfulness can result in faster recovery to baseline in the amygdala, which is activated by emotions—particularly negative emotion—stress, and anxiety.<sup>140</sup> They suggest that improving the rapidity of amygdala recovery could be a key attribute of resilience.<sup>141</sup>

Contrary to earlier beliefs that brain growth and development stopped sometime prior to adulthood, scientists have confirmed that the neuroplasticity of the brain never ceases (although for certain skills, like learning languages and musical instruments, the brain is more plastic in early life).<sup>142</sup> In effect, this means that at any age it is possible to rewire the brain and lay down new neural circuits.<sup>143</sup>

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*Mindfulness: What Happens to Your Brain When You Meditate*, OBSERVER (Jun. 26, 2017), <http://observer.com/2017/06/neuroscience-mindfulness-brain-when-you-meditate-development/> (reviewing, in an accessible way for the public, numerous studies that report changes in brain structures, functions, and neuroplasticity).

136. Baime, *supra* note 135, at 48; *see also* Congleton et al., *supra* note 72, at 30–32 (reviewing how mindfulness changes two key areas of the brain: the anterior cingulate cortex (associated with self-regulation) and the hippocampus (a part of the limbic system that is associated with emotion and memory)).

137. Baime, *supra* note 135, at 46.

138. *Id.* at 84; *see also* VERHAEGHEN, *supra* note 60, at 111 (reviewing Jha’s and other studies on working memory and meditation, and concluding that “the average meditator has a better working memory than 62% of nonmeditators”).

139. Amishi P. Jha, Scott L. Rogers & Alexandra B. Morrison, *Mindfulness Training in High Stress Professions: Strengthening Attention and Resilience*, in MINDFULNESS-BASED TREATMENT APPROACHES: CLINICIAN’S GUIDE TO EVIDENCE BASE AND APPLICATIONS, at 347–66 (Ruth A. Baer ed., 2014), [http://www.amishi.com/lab/wp-content/uploads/2014\\_MTinHighStressProfessions\\_Jha-Rogers-Morrison.pdf](http://www.amishi.com/lab/wp-content/uploads/2014_MTinHighStressProfessions_Jha-Rogers-Morrison.pdf).

140. Steve Paulson, Richard Davidson, Amishi Jha & Jon Kabat-Zinn, *Becoming Conscious: The Science of Mindfulness*, ANNALS OF N.Y. ACADEMY OF SCIENCES 87, 94 (2013).

141. *Id.*

142. *Id.* at 89.

143. *Id.*



## VII. THE CHALLENGES TO STARTING AND MAINTAINING A PRACTICE

### A. Finding a Good Training Program

One of the first challenges to adopting a mindfulness practice is to figure out which one to adopt and how to begin. Mindfulness-Based Stress Reduction (MBSR) training—the gold standard for secular mindfulness training—is available in many communities. It is a good idea to ensure that the trainers are actually qualified to engage in authentic MBSR training, for “there is mischief afoot in the marketplace for mindfulness.”<sup>144</sup> The extent to which mindfulness has swept across the country threatens to turn the practice into a kind of “McMindfulness”: junk food promising immediate rewards with little effort on the individual’s part.<sup>145</sup>

MBSR training requires an eight-week commitment to once-a-week classes, daily 45-minute home-meditation practice, and one day-long, largely silent retreat.<sup>146</sup> While it is possible to begin by accessing daily the multitude of shorter, free, online-guided meditations,<sup>147</sup> the MBSR style of immersion training helps enormously in forming a new habit and deepens understanding of mindfulness.<sup>148</sup>

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144. Marc R. Poirier, *Mischief in the Marketplace for Mindfulness*, in *WHAT’S WRONG WITH MINDFULNESS (AND WHAT ISN’T): ZEN PERSPECTIVES* 14 (Robert Meikyo Rosenbaum & Barry Magid eds., 2016). The author describes how:

commodification of mindfulness and meditation is increasingly prevalent and . . . obscures the importance of at least three key aspects of traditional Buddhist training: (1) a sustained commitment over time; (2) the usefulness of a community of practice in stabilizing and expanding individual practice; and (3) the importance of guidance from a learned and trusted teacher or elder with whom the student develops a long-term disciple relationship.

*Id.* at 14. The author is also concerned about the increasingly instrumental view of mindfulness training to achieve specific gains: “Approaching practice as a goal-oriented technique has troubling consequences.” *Id.* at 15.

145. Barry Magid & Marc R. Poirier, *The Three Shaky Pillars of Western Buddhism: Deracination, Secularization, and Instrumentalism*, in *WHAT’S WRONG WITH MINDFULNESS (AND WHAT ISN’T): ZEN PERSPECTIVES* 41 (Robert Meikyo Rosenbaum & Barry Magid eds., 2016) (“‘McMindfulness’: quick, effortless, inexpensive, available everywhere, anytime.”).

146. KABAT-ZINN, *FULL CATASTROPHE LIVING*, *supra* note 63, at xlvii, lxii-iii, lxxv, 132–46.

147. See, e.g., INSIGHT TIMER, <https://insighttimer.com/> (last visited July 30, 2018) (free guided meditations); UCLA MINDFUL AWARENESS RES. CTR., <http://marc.ucla.edu/mindful-meditations> (last visited July 30, 2018) (free guided meditations); *Guided Meditations*, TARABRACH.COM, <https://www.tarabrach.com/guided-meditations/> (last visited July 30, 2018); *The Basics of Mindfulness Meditation*, 10% HAPPIER, <http://www.10percenthappier.com/mindfulness-meditation-the-basics/> (last visited July 30, 2018) (first seven video lessons are free; thereafter pay by subscription); HEADSPACE, <https://www.headspace.com/> (last visited July 30, 2018) (free trial program; subscription fees thereafter).

148. MBSR-certified trainers may be located through <http://www.umassmed.edu/cfm/mindfulness-based-programs/mbsr-courses/find-an-mbsr->

Mindfulness training can be introduced in less time-intensive formats at law firms and law schools to acquaint professionals with the practice. Lawyers and law professors trained in mindfulness can offer programs tailored to a law firm's or law school's specific needs and preferences.<sup>149</sup> Defraying the costs of an MBSR program for lawyers and law students who, afterward, may want a deeper dive into the practice can support their practice and be a powerful signal of a law firm's or law school's support for health and well-being as a dimension of professional competence.

### ***B. Making the Time***

Another challenge is making the time to regularly engage in the practice and maintain it over time. Like so many New Year's resolutions to eat a healthier diet and get more exercise, any activity that requires an ongoing, daily commitment to achieve its benefits can fall by the wayside in the press of other, more immediate-seeming commitments to clients, employers, classes, family, and community.

A student once asked me: "How long does it take to see the benefits of mindfulness practice?" I responded: "How long does it take to lose weight? How long does it take to build physical endurance?" It all depends on how much time and energy you are willing to commit to healthy dieting or physical exercise. Eating wisely for one day a month or hitting the gym every other month is unlikely to result in visible or lasting benefits. It is the same with mindfulness.

### ***C. Developing the Discipline***

Mindfulness is often described as being simple but not easy. It is simple: just sit quietly for a few minutes or longer, observing but not reacting to whatever comes up in the mind. It is not easy: people will do almost anything to avoid being alone with their thoughts or feelings. In one series of experiments, many participants who were asked to sit with just their thoughts alone in a room and do nothing except think for 6–15 minutes found it so unpleasant that they began to administer electric shocks to themselves.<sup>150</sup> Though we call ourselves human beings, it seems we would much rather be *doing* than simply *being*. It can take considerable discipline to stick with a meditation practice that requires daily, silent sitting, as many people find

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program/. For those interested in exploring the Buddhist roots of mindfulness, there may be centers in local communities that offer trainings in Zen practices or other contemplative traditions.

149. Resources can be found at: WARRIOR ONE, MINDFULNESS TRAINING FOR THE LEGAL MIND, <https://warriorone.com/> (last visited July 30, 2018); MINDFULNESS L. SOC'Y, <http://mindfulnessinlawsociety.com/> (last visited July 30, 2018). The Association of American Law School's Section on Balance in Legal Education sponsors a Mindfulness Affinity Group, which includes a cross-section of national faculty with an interest in mindfulness in legal education. See *Section on Balance in Legal Education*, ASS'N AM. L. SCHS., [https://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp\\_cst\\_key=9fb324e8-e515-4fd3-b6db-a1723feeb799](https://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=9fb324e8-e515-4fd3-b6db-a1723feeb799) (last visited July 30, 2018); see also *supra* note 70 (resources collected by Prof. Scott Rogers).

150. Timothy D. Wilson et al., *Just Think: The Challenges of the Disengaged Mind*, 345 SCIENCE 75, 75–77 (July 2014).

“doing nothing” to be an unpleasant activity, at least at first. This kind of initial negative reaction to seemingly “doing nothing” may be especially common for high-achieving, type-A attorneys and law students.

One way to address the “it takes discipline” challenge is to find a community in which to keep up one’s mindfulness practice. Law students are beginning to develop student chapters of the Mindfulness in Law Society to support their members’ practices.<sup>151</sup> Lawyers can find national resources that allow them to engage in short, sometimes regularly scheduled meditations during the work week. For example, attorney Judi Cohen, who is the founder of Warrior One, LLP, offers a weekly guided meditation by national teleconference call.<sup>152</sup> Attorney Jeena Cho, author of *THE ANXIOUS LAWYER*, offers a variety of guided meditations online.<sup>153</sup>

#### ***D. Potential Adverse Side Effects***

Another challenge for some people is that mindful meditation can dredge up such painful thoughts and emotions that their mental well-being worsens. Such adverse effects can include feelings of panic, psychological disorders, and insomnia, particularly for especially vulnerable people (such as those with PTSD).<sup>154</sup> One story recounts how attending a mindfulness retreat triggered memories of childhood trauma, leading to a depressive breakdown.<sup>155</sup> These unintended yet potential consequences are good reasons for ensuring that mindfulness trainers are qualified, experienced teachers who can screen for such potential problems and refer appropriately.

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151. *Law Students*, MINDFULNESS L. SOC’Y, <http://mindfulnessinlawsociety.com/divisions/lawstudents/> (last visited Aug. 30, 2018).

152. *See Join the Wake Up Call*, WARRIOR ONE, <https://warriorone.com/wake-up-call/> (last visited July 27, 2018). The “Wake-Up Call” is held every Thursday at 8:00 a.m. Pacific time and offers a ten-minute talk followed by ten minutes of guided meditation. *Id.*

153. Guided meditations for lawyers are available at <http://theanxiouslawyer.com/category/guided-meditations/>.

154. Utpal Dholakia, *The Little-Known Downsides of Mindfulness Practice*, PSYCHOL. TODAY (Apr. 27, 2016), <https://www.psychologytoday.com/blog/the-science-behind-behavior/201604/the-little-known-downsides-mindfulness-practice>; *see also* William Van Gordon, Edo Shonin, & Javier Garcia-Campayo, *Are There Adverse Effects Associated with Mindfulness?*, 51 AUSTL. & N.Z. J. PSYCHIATRY 977 (2017) (discussing concerns arising from empirical and anecdotal reports that a mindfulness-based intervention “has led to (e.g.) executive memory impairments, depersonalisation, asociality, panic attacks, psychotic episodes, addiction (i.e. to mindfulness) and/or impaired reality testing”); VERHAEGHEN, *supra* note 60, at 154–56 (discussing studies showing different findings on whether there may be negative side effects associated with mindfulness meditation, and it is unclear who may be at risk for them).

155. Dawn Foster, *Is Mindfulness Making Us Ill?*, GUARDIAN (Jan. 23, 2016), <https://www.theguardian.com/lifeandstyle/2016/jan/23/is-mindfulness-making-us-ill>; *see also* Tomas Rocha, *The Dark Night of the Soul*, ATLANTIC (June 25, 2014), <https://www.theatlantic.com/health/archive/2014/06/the-dark-knight-of-the-souls/372766/> (recounting current research into, and the experiences of people who have had, negative psychological or emotional reactions to meditation).

### VIII. RECOMMENDATIONS BASED ON ONE LAW SCHOOL'S EXPERIENCE

In recent years, Georgia State University College of Law implemented a mindfulness-training program for law students. After experimenting with four- and eight-week programs adapted from the MBSR format, we have settled on a six-week program in the fall semester every year, usually called *Mindful Mondays*. The Author offers this training with a co-instructor who is certified to teach MBSR programs.<sup>156</sup>

First-year students learn about the program during their orientation period, and it is generally offered in September and October of each year. It is open to all law students and averages about 60 students who attend the weekly one-hour trainings. While it is a voluntary program, students who want to receive the training are asked to commit to attending all six weekly sessions, which are held at noon with a light lunch served, and to undertaking daily 10–15-minute mindfulness meditation practices at other times of their own choosing during the week. The Author has also offered a modified version of this training to the school's part-time evening students.

Students have been very positive in their evaluations of our program. Some have characterized it as a “life saver” or a “game changer” for them because it enhances their resilience and ability to cope with the stresses of law classes and exams.<sup>157</sup> We recognize that our *Mindful Mondays* program, an abbreviated form of MBSR training, can simply plant the seeds of mindfulness—it is up to individual students to decide how extensively to incorporate the practice into their daily lives after the program ends, or whether to go on to deepen their practice with additional trainings or retreats.

The *Mindful Mondays* program is supported by other initiatives at the law school. The law school's student chapter of the Mindfulness in Law Society has in the past offered weekly guided meditations and a one-day retreat for its members as a follow-up to this training.<sup>158</sup> One of the Author's former graduate assistants was a certified yoga instructor, and for over two years he offered twice-weekly yoga

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156. Co-instructor Helen B. Vantine, PhD, founded the Atlanta Mindfulness Institute. See *Certified Mindfulness Experts*, ATLANTA MINDFULNESS INST., <http://www.atlantamindfulness.com/about/> (last visited July 27, 2018). The Author received mindfulness-in-law teacher training from Warrior One (a ten-month program) and several other mindfulness trainings, and she is pursuing qualification as an MBSR instructor through the Center for Mindfulness at the University of California San Diego.

157. See, e.g., Tatiana Posada, *How Mindfulness Changed My Life: A Law Student's Story*, GA. ST. U. NEWS HUB (April 27, 2018), <https://news.gsu.edu/2018/04/27/how-mindfulness-changed-my-life-a-law-students-story/>.

158. *Mindfulness in Law Society*, GA. ST. U. C. L., <http://sites.gsu.edu/mils/> (last visited Aug. 30, 2018). This student organization has recently expanded its mission to encompass wellness and health for law students more generally, and it has become a Wellness in Law Society that also retains its interests in mindfulness, meditation, and yoga.

classes for the law-school community.<sup>159</sup> This year, the Author has instituted a *Take-Twenty Tuesdays* program, which is designed to provide ongoing support for students interested in continuing a meditation practice in an informal way. Two times a week (once at noon, once at 5:15 p.m. for evening students), the Author offers a ten-minute guided meditation followed by ten minutes of debrief and discussion on any health and wellness topics the students may be interested in.

This year, the law school has also implemented a new seven-week program called *Wellness Wednesdays* through its Center for Law, Health & Society. The Author is the co-convenor of this series of noon-time presentations whose theme is “From Busy to Balanced: Designing Your Life to Live It Well.”<sup>160</sup> Its weekly sessions encompass the multiple dimensions of well-being, including mental health, physical health, emotional and social well-being, financial health, and professional well-being. Some sessions feature guest speakers who are practicing attorneys and who have struggled with some of the mental-health and substance-use disorders outlined in the studies at the outset of this Article. The other co-convenor of the series is a graduate of our law school who has coaching and breath-work expertise, and who is active in the State Bar of Georgia’s Wellness Committee.<sup>161</sup>

A new companion initiative that launched with the *Wellness Wednesdays* series this year is a student-sponsored, weekly health challenge. Eight student organizations have sponsored weekly photo competitions for the student body to take pictures of themselves, friends, and families engaging in healthy activities related to each week’s wellness theme. Together these wellness programs are designed to foster a culture of health and well-being among law students.

An overarching theme of the *Wellness Wednesdays* series is that students and lawyers need to decide how they want to achieve their own individual sense of balance across the multiple dimensions of well-being in ways that align with their own core values and inner sense of purpose. Our students are the principal architects of their own lives, and they should be thoughtful about how they design their lives to live them well. The program avoids the conventional duality of seeking “work-life balance,” as work is simply one part of life. Rather, the series encourages students to think about how to attend to all of the dimensions of well-being and find their own ways of integrating those dimensions into their lives.<sup>162</sup> Our program

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159. Charles (J.D. '18) Leads National Mindfulness Society's Student Division, GA. ST. U. C. L., (Jan. 10, 2017), <http://law.gsu.edu/2017/01/10/charles-j-d-18-leads-national-mindfulness-societys-student-division/>.

160. What Makes Lawyers Happy? Wellness Program Instructs Students on Well-Being, GA. ST. U. C. L., (Feb. 2, 2018), <http://law.gsu.edu/2018/02/02/what-makes-lawyers-happy/>.

161. Plamen Russev, J.D., is a contract attorney with SunTrust in Atlanta, a certified Integral Coach and Breathwork Practitioner, and Chair of the Mental Health Subcommittee of the Attorney Wellness Committee of the State Bar of Georgia.

162. Our multidimensional approach is consistent with the National Task Force Report’s definition of “lawyer well-being as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others.” NATIONAL TASK FORCE REPORT, *supra* note 12, at 9.

acknowledges that the students' individual senses of balance or integration will be continually changing and evolving as the students and their circumstances change and evolve over a lifetime.

Based on our experiences with these programs, a few preliminary recommendations are in order. First, it is important to begin any mindfulness-training program with qualified, experienced instructors. MBSR programs are the most well-researched mindfulness programs, and their benefits have the strongest support in the clinical-studies literature.<sup>163</sup> An institution should consider affiliating with mindfulness teachers who can offer MBSR or other similarly well-established and high-quality programming.

Second, while adopting mindfulness training is one way to support the mental health and well-being of lawyers and law students, it is not the only way. Some legal professionals and students can be highly skeptical about mindfulness either as too “touchy feely” (and thus irrelevant to the study or practice of law) or as “coddling” lawyers or law students (and thus not within the role and responsibility of law firms or law schools to deliver). The National Task Force Report has squarely put promoting the health and well-being of lawyers and law students on the agenda of the legal profession, so if there are other avenues to address wellness that face less initial resistance from an institution's constituencies and may resonate more with them, there is no harm in beginning elsewhere. The National Task Force Report acknowledges that lawyer well-being is a “continuous process in which lawyers strive for thriving in each dimension of their lives.”<sup>164</sup> Creating alternative ways to approach issues of health and well-being was one of the reasons for establishing the *Wellness Wednesdays* series at our law school, despite already having a well-established mindfulness program.

Third, legal employers and law schools should collaborate with their local- or state-bar association to align their mindfulness or other wellness programs with new mindfulness or wellness initiatives and resources that may already be underway at the bar association. For example, our State Bar of Georgia has initiated a program called *Georgia Lawyers Living Well*, which provides resources for the mental, physical, and social well-being of lawyers.<sup>165</sup> Our law school's *Wellness Wednesdays* series collaborates with attorneys on the state bar's Wellness Committee and Lawyer Assistance Program. There is no reason to reinvent the wheel in wellness programming. Also, when law students see practicing lawyers on bar committees taking the time and energy to promote their own health and well-being and that of their colleagues and the profession, it sends a powerful signal to

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163. GOLEMAN & DAVIDSON, *supra* note 69, at 85, 165–66.

164. NATIONAL TASK FORCE REPORT, *supra* note 12, at 9.

165. *Georgia Lawyers Living Well*, ST. B. GA., <https://www.gabar.org/wellness/> (last visited July 27, 2018). For an example of bar associations specifically supporting mindfulness practices, see Dade County Bar Association & the Federal Bar Association's South Florida Chapter, Mindfulness in Law Joint Task Force, <http://mindfulnessinlawcommittee.com/> (last visited Aug. 30, 2018) (introducing the South Florida legal community to information on mindfulness and mindfulness programming, and supporting the formation of mindfulness-practice groups).

students that ensuring their own health and well-being is an ongoing personal and professional responsibility.

Fourth, it can be helpful to connect with national programs that support mindfulness in the legal profession. The national Mindfulness in Law Society offers resources and opportunities for law students, judges, lawyers, and others in the profession to learn about developments in the field and to network with experienced mindfulness professionals.<sup>166</sup> Warrior One offers mindfulness-in-law teacher-training programs, as well as programs tailored to fit an individual institution's needs.<sup>167</sup> Professor Scott Rogers, director of the mindfulness-in-law program at the University of Miami, gives presentations and offers training programs nationally.<sup>168</sup> A number of recent books are also devoted to fostering mindfulness and a balanced life specifically for lawyers and law students.<sup>169</sup>

Finally, legal employers and law schools should consider how their institutions can support mindfulness practice on an ongoing basis after the initial training period ends. Just as physical exercise improves the body's strength and endurance over time, mindfulness is training for the mind and heart, and it requires ongoing practice to see its benefits endure and increase over time. Whether encouraging friends and colleagues to get together informally to practice, establishing regular formal meditation sessions, or hiring an outsider or training an insider within an institution to provide ongoing support, it is important to commit to fostering mindfulness as a vital part of an institution's culture over the long term.

### CONCLUSION

The well-being of lawyers and law students should be a priority of the legal profession. While law firms, other legal workplaces, law schools, and bar associations all have roles to play in supporting legal professionals' mental health and well-being, individual lawyers and law students can also learn healthy strategies for coping with the inevitable stressors of legal practice and law school.

Mindfulness offers one approach that can be undertaken by anyone, anywhere, and at any time—although it does take discipline to undertake the practice consistently over time. You need to develop the intention to set aside purposeful

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166. MINDFULNESS L. SOC'Y, <http://mindfulnessinlawsociety.com/> (last visited Aug. 30, 2018).

167. *Mindfulness Training for the Legal Mind*, WARRIOR ONE, LLC, <https://warriorone.com/> (last visited Aug. 30, 2018).

168. See SCOTT ROGERS, <http://scottrogers.com/> (Prof. Roger's website with offerings). For additional resources created by Prof. Rogers, see *supra* note 70.

169. See, e.g., DEBORAH CALLOWAY, *BECOMING A JOYFUL LAWYER: CONTEMPLATIVE TRAINING IN NON-DISTRACTION, EMPATHY, AND EMOTIONAL WISDOM* (2012); GARY FRIEDMAN, *INSIDE OUT: HOW CONFLICT PROFESSIONALS CAN USE SELF-REFLECTION TO HELP THEIR CLIENTS* (2015); CHO & GIFFORD, *supra* note 124; GEORGE W. KAUFMAN, *THE LAWYER'S GUIDE TO BALANCING LIFE AND WORK: TAKING THE STRESS OUT OF SUCCESS* (2d ed. 2006) (while not focused specifically on mindfulness, providing a wide variety of similar and complementary exercises to promote work-life balance); NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010); NATHALIE MARTIN, *LAWYERING FROM THE INSIDE OUT: LEARNING PROFESSIONAL DEVELOPMENT THROUGH MINDFULNESS AND EMOTIONAL INTELLIGENCE* (2018).

time to quiet your mind and focus your attention in the present moment, whether on your breathing, body, emotional state, eating, walking, or surroundings. Regular practice enhances the ability to deal with distractions, not get caught up in them, and keep your attention focused during the day, resulting in more efficiency, clarity, and productivity in your work. Regular practice can also build the ability to remain calm amid triggers and stressors that otherwise would evoke automatic, unreflective reactions (that you may regret later). By literally taking a breath, you can choose an appropriate response in this mindful pause.

Mindfulness is not just about stress relief, though that can be a benefit of regular practice. Over time, by acquainting yourself intimately with your thoughts, physical sensations, and emotions—which often remain only at the level of the subconscious—mindfulness can deepen your self-awareness and your ability to be self-reflective. Although the scientific research on mindfulness should be interpreted with caution given its limitations, it does suggest that mindfulness practice can positively affect many of the emotional and psychological variables of daily life, such as attention regulation, mood, emotion regulation, anxiety, depression, self-concept, empathy, and compassion.

Students at law schools across the country are increasingly asking for more support for their mental health, and student leaders at 13 top law schools have recently pledged to improve the mental health of their campuses.<sup>170</sup> In light of law students' strongly articulated need and desire for more support from their law schools for their health and well-being, the Author is pleased to have one of her students offer the last words in this Article on the benefits of mindfulness for the legal profession. Tatiana Posada took mindfulness training offered at our law school during her first semester of 1L year in 2015, and has been practicing regularly ever since. Nearly three years later, as she approached graduation and the summer bar exam, she reflected on how mindfulness practice has changed her life:

I began to see a difference after about three weeks.

....

I noticed changes in my personal life first. Small things, like I was calmer while driving in heavy traffic. Instead of getting frustrated, I was rolling down my windows and enjoying the sunrise. My personal relationships grew and became healthier as I became more patient and less anxious.

I also noticed a difference in my academics. In class, I became less anxious about getting cold called, and I became more comfortable answering questions posed to the class. And when it came time for exams, mindfulness came through for me. With mindfulness, I could own my test anxiety instead of it owning me.

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170. Stephanie Francis Ward, *Students at Top Law Schools Ask for More Mental Health Support*, A.B.A. J. (Jan. 2018), [http://www.abajournal.com/news/article/students\\_at\\_top\\_law\\_schools\\_ask\\_for\\_more\\_mental\\_health\\_supports](http://www.abajournal.com/news/article/students_at_top_law_schools_ask_for_more_mental_health_supports).



I saw benefits of practicing mindfulness in my employment as well.

. . . I would take several deep breaths before working on a project. I used mindfulness to keep my focused attention, so I didn't waste time creating more stress for myself about all the other assignments I needed to complete. I took everything one step at a time.

. . . .

. . . [When I was interviewing for jobs], without fail, the first question I got in every interview was: tell me about mindfulness. Interviewers across the board were impressed with the program and my ability to already know the importance of having healthy tools to manage stress and anxiety now.

I had attorneys tell me they wish they had this program when they were in law school because it might have saved relationships or changed career trajectories.

. . . [U]sing mindfulness to create and maintain a healthy lifestyle can help ensure you deliver your best work and your best self for all of your clients throughout your career.<sup>171</sup>

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171. Posada, *supra* note 157.