The Mindful Practice of Law

Jennifer M. Cormano is an associate in Nixon Peabody’s Los Angeles office. Her practice focuses on corporate governance and formation matters, joint ventures, mergers, acquisitions, and other strategic transactions. The information outlined does not constitute legal or medical advice and is meant solely for educational purposes.

- Mental health matters for the competent practice of law.
  - Mental health is important. As lawyers, we must have both the technical legal skills to properly represent our clients, as well as the mental and emotional abilities.
  - We need to be able to identify our own mental states and emotional issues. In reviewing our own mental states, we have to be able to identify the symptoms of stress, depression, and addiction as they are some of the primary mental and emotional issues that impair our ability to perform legal services with competence. These issues can also prevent or lower the enjoyment of our jobs and our lives.
  - Workable solutions are critical. We also have to create workable solutions to combat the unique pressures of practicing law. Meditation, mindfulness, and yoga have proven effective tools in helping people (including lawyers) decrease stress and increase general well-being.

- Many professions are high stress, yet a 2016 study by the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation found that of just under 13,000 practicing lawyers, approximately 28% were struggling with depression and 20% with problematic drinking. Why is it that lawyers have such bad statistics?
  - Lawyers might be unique. Many of the same personality traits that are over-represented in adults recovering from substance abuse-related disorders and mood disorders are common in legal professionals. Those personality traits include high achievement orientation, perfectionism, and obsessive-compulsion. Mental Health professionals studying lawyers posit that the same traits that help lawyers excel at their jobs tend to make them miserable in their professional and personal lives.

---

What exactly is stress?

- The definition of stress. Stress is our body’s evolutionarily designed response to help us survive an actual or perceived threat. It is an uncomfortable emotional experience coupled with physical changes. Sometimes this is helpful, inspiring us to action to complete tasks. Other times it is a hindrance to optimal performance. Further, the physical changes our bodies experience can have adverse health consequences. Insomnia, muscle pain, high blood pressure, and a weakened immune system are all serious health conditions that can result from untreated chronic stress.

  - “Stress: an uncomfortable state of mental or emotional strain or tension resulting from adverse or demanding circumstances. Accompanied by neural output from the amygdala, which tells the hypothalamus to signal the adrenal glands to make the hormone cortisol.”

- Our bodies physically respond. There are many complex things that happen in our bodies when we perceive a threat, one of which is the production of the hormone cortisol. We need cortisol to survive, but large doses of cortisol over long periods of time are extremely physically and mentally damaging.

  - “Cortisol: the stress hormone released from the adrenal glands, which acutely mobilizes sugar for use but which chronically lays down visceral fat and also reduces the serotonin-1a receptor number.”

- Chronic stress is REALLY bad for us. Further, chronic stress contributes to anxiety and depression. In addition, research supports that there is a link between chronic stress and substance abuse/addiction.


There is a critical difference between the feeling of pleasure and the feeling of happiness. This difference is important to understanding addiction and depression.

- The definition of pleasure. Pleasure is instant gratification; a short-lived, exciting, good feeling that we crave. For example: the buzz from drug use is the feeling of pleasure. Pleasure or “reward” is driven by the brain chemical (i.e., neurotransmitter) dopamine.

5 Lustig, supra, at 296.
6 Id. at 60-61
7 Id. at 61.
8 Id. at 294.
9 Id. at 61.
11 Lustig, supra, at 8-11.
Dopamine is linked to addiction disorders. When released chronically, dopamine reduces the brain’s ability to receive and process the feeling of reward (i.e., tolerance).

- **Dopamine**: part of the reward pathway. A neurotransmitter, that when released, can acutely cause feelings of reward, but when released, chronically reduces the number of its receptors, leads to tolerance.”  

- The definition of happiness. Happiness is contentment; a long-lasting calm, a good feeling that satisfies us. For example: graduating from law school or watching your child achieve a milestone could produce a feeling of happiness. Happiness or contentment cannot be achieved through substance use, but typically is achieved through deeds or giving. This feeling of contentment is driven by the neurotransmitter serotonin. Serotonin is linked to depressive disorders.
  - **Serotonin**: part of the contentment pathway. A neurotransmitter that, when it binds to its -1a receptor on neurons, transmits feelings of contentment; and, when it binds to its -2a receptor, evokes the ‘mystical experience.’”

- Stress can prevent us from feeling happy. Further, research suggests that the stress hormone cortisol reduces the brain’s ability to absorb serotonin (i.e., stress reduces the ability to feel content or happy).


- **People say they are “addicted” to lots of things. What does it mean to be addicted to something?**
  - The definition of addiction. A definition of addiction is “a strong and harmful need to regularly have something (such as a drug) or engage in a specific behavior (such as gambling) due to an overwhelming bio-chemical drive, which cannot be controlled by behavioral restraint.”

- Symptoms of addiction. The American Psychiatric Association categorizes symptoms of addiction for substance abuse into four categories:
  - **Impaired control**: a craving or strong urge to use the substance; desire or failed attempts to cut down or control substance use
  - **Social problems**: substance use causes failure to complete major tasks at work, school, or home; social, work, or leisure activities are given up or cut back because of substance use
  - **Risky use**: substance is used in risky settings; continued use despite known problems

---

12 Id. at 294.
13 Id. at 8-11.
14 Id. at 291.
15 Id. at 62-63.
16 Id. at 294.
- **Drug effects**: tolerance (need for larger amounts to get the same effect); withdrawal symptoms (different for each substance).  

- **People throw around the term “depression” a lot. What is depression?**
  - The definition of depression. Depression is a mood disorder that causes a persistent feeling of sadness and loss of interest that significantly impairs daily life.
    - “*Depression:* a mental condition characterized by feelings of severe despondency and dejection, inadequacy, and guilt, often accompanied by lack of energy and disturbance of appetite and sleep.”
  - Depression is very prevalent. According to the American Psychological Association, depression is one of the most common mental health disorders in the United States.
  - Symptoms of depression. Depression manifests differently for different people, but here are some common symptoms:
    - “Prolonged sadness or feelings of emptiness.
    - Feelings of helplessness or hopelessness.
    - Feelings of guilt or worthlessness.
    - Anger and irritability.
    - Restlessness.
    - Difficulty concentrating.
    - Fatigue.
    - Changes in sleep patterns.
    - Appetite changes.
    - Chronic pain, headaches, or stomachaches.
    - Loss of interest in activities.
    - Withdrawal from friends and family.
    - Thoughts of death or suicide.”

---

18 Lustig, supra, at 294.
20 Id.
Our brains change over time. We have the ability to modify our behavior to leverage the brain’s ability to change for the better and increase our overall health (both mentally and physically).

- **The concept of neuroplasticity.** Scientists once believed that the brain developed when we were young and stopped developing at a certain age. We now know that the brain continues to change over the course of our lives. This concept is called neuroplasticity, and there is a large amount of research as to exactly how it works.\(^{21}\)

- **The benefit of neuroplasticity.** It isn’t necessary to understand the details of how these changes work to take advantage of activities that will decrease chronic stress and our bodies’ physical response (e.g., the chronic production of cortisol that has so many harmful effects).

**The three categories of self-care.**

- **The word “self-care” is misleading.** Self-care is a trendy term usually associated with some kind of treat or luxury, like getting a massage or purchasing an expensive item. However, it is important to reframe this perception. Self-care includes all the activities we prioritize to properly take care of our mental health because they support lowering our stress levels.

- **Category 1—“Tuning Out” Activities.** These are the activities that we gravitate towards when having a bad day. For example: having a drink or binge-watching television. These activities are generally pleasure-seeking and dopamine-producing activities. They produce instant gratification that feels great, but is short-lived.
  - These activities in moderation are great but in excess lead to addiction.
  - We should consciously choose when we engage in these types of activities. They should be treats to enjoy, rather than a default way of life.

- **Category 2—“General Upkeep” Activities.** These are the things we all have to do to keep our lives running. For example: doing the laundry or paying bills. A recently invented word for these types of activities is “adulting.” For the most part, none of these activities start out as stress-inducing tasks. However, if we ignore these activities, they eventually become time-sensitive and stressful. For example: most of us have enough work clothing to get through a week or two without going to the dry cleaners. However, if we don’t adequately prepare and plan, it could result in running out of clean suits in the middle of a trial or a deal closing.
  - These activities tend to be boring, and it can be hard to have the motivation to do them consistently. Many people rely on the stress of waiting to the last minute to inspire the need to complete these tasks.

---

\(^{21}\) Stephanie Liou, Neuroplasticity Hopes Huntington’s Outreach Project for Education at Stanford, available at [https://hopes.stanford.edu/neuroplasticity/](https://hopes.stanford.edu/neuroplasticity/).
• However, these are the types of activities we need to make sure we have properly planned for to prevent the self-made fire drills. (Our clients give us enough of those without creating them ourselves!)

  o **Category 3—“Proactive” Activities.** For the most part, these are the activities that we all know will help us in the long run. For example: exercising, meditating, or going to a therapy appointment. These activities generally are stress reducing (i.e., cortisol reducing) and promote feeling satisfied/happy.

  ▪ These are the activities that take willpower to choose over the Category 1 dopamine-producing exciting activities. This is because the “reward” feeling generates motivation for us to feel that pleasure again and fast.

  ▪ However, the Category 3 activities are also the activities that, when you finish them, you often feel better and more content.

  ▪ Category 3 activities are critical self-care activities that we often overlook as being optional. We make excuses and say we don’t have enough time. But, these are exactly the activities we should be prioritizing and consistently engaging in to improve our overall well-being and happiness. It is possible to include these activities in efficient ways.

• **Yoga, meditation, and mindfulness are all effective ways to reduce stress and change your brain for the better.** Here are some fun facts (backed by scientific studies) about the impacts of yoga, meditation, and mindfulness.

  o **Your brain on meditation.** Dr. Sara Lazar, an assistant professor in psychology at Harvard Medical School, researches the impacts of yoga, meditation, and mindfulness. She gave a very popular TEDx talk where she discusses her work and how meditation and yoga do actually change our brain (i.e., neuroplasticity at work). She conducted studies that showed that meditation leads to growth in areas of the brain important for learning, memory, emotional regulation, perspective-taking, and compassion.

  o **Meditation reduces stress.** In one of her studies, people who never meditated before engaged in an eight-week mediation-based stress reduction program where they meditated every day. At the end of the study, the part of their brain that is associated with the “fight or flight” stress response (the amygdala) had decreased in size in direct proportion to how much stress reduction the participants reported experiencing. Meaning, the reduction in stress the participants self-reported was supported by neurobiological changes.

  o **Additional resource:** Dr. Lazar’s TEDx Talk is available at https://www.youtube.com/watch?v=m8rRzTtP7Tc&vl=en.

• **Definitions of yoga, meditation, and mindfulness.**

  o **The definition of meditation.** Meditation is a practice of concentrated focus upon a sound, object, visualization, breath, movement, or attention itself. The take-home points here are that: (i) meditation isn’t just sitting there thinking about just anything
you want, and (ii) it doesn’t have to be connected to any spiritual or religious faith. You are focusing your mind on one thing (like your breath), in order to rest it from thinking about everything.

- **For example:** a great simple mediation is focused breathing. You can sit or lie down. If you are sitting, be sure your feet are flat on the ground with your legs uncrossed. Your hands can be in a comfortable position with your arms unfolded. Close your eyes. Take a deep breath in, while slowly counting to three. The goal is to time your breath so that you have inhaled as much as possible as you reach number three. Then exhale while counting to three, reaching three as you completely let out all of the air for that breath. The focus of the meditation is on the breath entering your body and then leaving your body. You focus on the sensation and feeling of the act of breathing. Repeat this for as many breaths as you would like. If your mind wanders at any time from the act of breathing in or out, just gently bring your focus back to your breath, and start where you left off.


  - **The definition of yoga.** In the United States, yoga classes have become very popular, and the message that yoga isn’t just a physical practice has gotten a bit lost. The physical practice of yoga is actually called asana, and it is just one of many parts of yoga. There are many types and definitions of yoga. One definition “... is the ability to direct the mind exclusively toward an object and sustain that direction without any distractions.” The idea is to concentrate on the details of the physical pose to focus your mind. You think about the specifics of the pose (e.g., Where is my foot pointing? How high should my hand be? etc.) and how your body feels (e.g., Can I reach higher or is this my limit? Is this level of discomfort ok, or am I hurting myself?). It is the unification of your mind’s thoughts with your body’s physicality. The more intense and physically demanding a pose is, the more the pose itself helps train the mind to focus on the movement. For example: if you are attempting a balancing pose, your body will try to adjust your weight properly to not fall over, and that helps naturally guide your focus to the act of balancing.

  - **Additional resource:** Ally Hamilton, Yoga’s Healing Power: Looking Inward for Change, Growth & Peace (2016).

  - **The definition of mindfulness.** Mindfulness is the act of observing one’s physical, mental, and emotional states in the current moment without judgement. The idea is that you are focused exclusively on the task you are currently engaging in. You are mentally present where you are physically located, and in the physical activity you are performing, without assigning any value (positive or negative). You perform only one task at a time with your full, undivided attention, and focus.

23 Id. at 149.
For example: if you mindfully wash your face, you focus on what the water feels like on your skin and the smell of the soap without deciding if you like or dislike the feeling or smell. You stay focused on the experience of washing your face without thinking about how you will brush your teeth next and without simultaneously having a conversation with your spouse.


Starting a regular practice doesn’t have to be hard or complicated. Here are some practical and realistic tips for starting a regular meditation practice.

- **Start simple and small.** Pick an activity that you can do daily, and accomplish relatively quickly. When you start out, it is important to focus on the quality of the activity and the number of days you can practice it, rather than the amount of time you spend on your practice on a particular day. The goal is to get a consistent routine. Start with something that feels doable and something you think you will enjoy. A great starting point is to say you will complete a breathing meditation of five or ten deep breaths once or twice a day.

- **Pick something you already do and include your practice in it.** When starting out, attaching your new practice to something you already do (like finishing your commute to the office) helps easily build a practice without making it feel like you are adding another task in your day. For example: you could start by completing the focused breathing meditation for five breaths before getting out of the car when you arrive at the office and/or before getting out of the car when you arrive home. You could start to build an everyday mindfulness practice by picking something you do daily that you would be able to slow down and do in a more focused way. A few examples: showering, shaving, or dishwashing.

- **Schedule your practice.** For longer practices (i.e., more than five minutes), protect the time in your schedule. When I first started my daily meditation practice, I scheduled it into my shared work calendar as “no-calls” time. Even though my assistant had access to my schedule, I was the only person who could touch that appointment. He was permitted to schedule client calls or meetings during that time, but he had to check-in with me. My rule was that I treat that time as if it was another client need. I could move it to another time of the day, but I could not cancel it. That way, I was flexible to my work demands, but I was sure I was getting in my meditation time.

- **Track your practice and its consistency.** One of the best things you can do to create a practice is to commit to consistency by objectively tracking your progress. It doesn’t have to be complicated; you can keep a little tick mark on your schedule, a tally on a post-it note in your car, or use an app to track the days you complete your practice. This is a way to hold yourself accountable for your practice. It is critical that you are consistent in order to get the most benefits from your practice. While you will likely feel some immediate stress relief after your practice each day, brain changes and other
positive effects take time. The studies that show how advantageous mindfulness, yoga, and meditation are all show these benefits after the study participants have done the exercises consistently and over time. It is fine if you miss a day or two (and even if you have missed for a week or more), just pick up where you left off. This isn’t about being perfect every day, just doing it most days.

- **Slowly grow the length of your practice over time.** About every one to two weeks, you should check-in on your practice and see if you want to try and increase the amount of time you spend on it. For example: if you are completing the focused breathing meditation for five breaths to start, after two weeks, perhaps increase it to ten. After you are consistent with ten, try fifteen or twenty. (For this mediation, once the number becomes too high to count easily, I recommend setting an alarm with a gentle alert noise.) If you are building a mindfulness practice by mindfully washing your face, perhaps add on brushing your teeth or flossing.

- **Be patient and forgiving with yourself as you build your practice.** Lawyers are often incredibly critical and perfectionistic. We aim to be the best, no matter what we are doing. You are a beginner, learning a new thing. Give yourself permission to learn at your own speed and take the time you need to grow a practice that works for you.
Sample Practices

- **Multiplying Gratitude Exercise**
  - Think of one thing or person that you are grateful for. Think of specifically why you are grateful. Let that person or thing lead you to another. Think specifically why you are grateful for that new person or thing. Continue.
  - Example: “I am grateful for my education. I am grateful for the opportunities it has given me. I am grateful for my job. I have an income that permits me to provide for myself and my family. I am grateful for my home. I am grateful for the shelter. I am grateful for the people in my home. I am grateful for my spouse because . . .”

- **Body Scan**
  - If your mind wanders at any time, just gently bring your focus back to your breath, and then start where you left off. You can either be seated or flat on the ground.
    - Start with a few deep breaths with your focus on the breath.
    - Bring your focus to your toes. If you cannot separate your toes from the rest of your foot, give them a little wiggle.
    - How do your toes feel? Do they hurt? If so, what kind of hurt? Soreness? Do they feel energized? Or merely neutral?
    - Try not to place a judgement on that feeling or change it. If you would like, you can thank your toes for all they do. Each one of them works to help you balance as you walk every day.
    - Take a slow deep breath and let it go.
    - Move next to the arch of your foot, asking the same questions with the same attention.
    - Now your ankle. Move up your body slowly and specifically. Be sure to include the front of your body (e.g., stomach), the back (e.g., lower back), and all joints (e.g., knees). Depending on how much time you have, you can be as specific as you would like for each body part (e.g., left-big toe) or as general (e.g., my feet).
    - When you finish with your head and face, take at least three big slow breaths. Visualize these breaths as the air travels in your mouth and fills your body all the way to your toes and fingertips.
    - Take a moment in gratitude for your body.
    - Slowly bring life back to your body by wiggling your toes and hands.
    - Slowly add movement to the rest of your body and gently open your eyes.
• **Sensory Eating Exercise**
  o Choose a food you really like to eat. The exercise is to eat one bite as if you are a small child/baby trying the food for the first time. Explore it! Use all five of your senses to really investigate and discover everything you can about it. Have fun with the exercise and repeat as many times as you want during your meal. Here are some helpful steps:
    - **Sight**—Look at your food. Examine its color, shape, and size.
    - **Smell**—Close your eyes and smell the food.
      What does it smell like? Sweet? Salty? Strong? Weak? Focus as much as you can only on the smell of the food.
    - **Touch**—Take a small part of the food with your hands. Feel the food in your fingers.
      What does it feel like? What are its textures? Soft? Squishy?
    - **Sound**—Hold the food to your ear and listen as you move it around.
      Does it make a noise? What does it sound like?
    - **Taste**—
      - Close your eyes and put the food on the tip of your tongue and just hold it there.
        What does it taste like before you chew it?
      - Move it to the right side of your mouth.
        Is there a different sensation here?
      - Now the left.
        Anything different?
      - Chew very slowly and notice how your tongue moves.
      - As you chew, does that change the taste of the food?
      - When you are ready, swallow the food.
  o Now that the food is gone.
    Can you still taste the food in your mouth? What does it taste like?
**Important Resources**

- **National Suicide Prevention Lifeline**: The Lifeline provides 24/7, free, and confidential support for people in distress; prevention and crisis resources for you or your loved ones; and best practices for professionals.
  - Hotline: 1-800-273-8255
  - The website [https://suicidepreventionlifeline.org](https://suicidepreventionlifeline.org) provides online chat support.

- **ABA Commission on Lawyer Assistance Programs**: “To assure that every judge, lawyer, and law student has access to support and assistance when confronting alcoholism, substance use disorders, or mental health issues so that lawyers are able to recover, families are preserved, and clients and other members of the public are protected. This mission is carried out by supporting the work of state and local Lawyer Assistance Programs (LAPs) as they provide hands-on services and support to those in need of their assistance.”
  - The website: [https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/](https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/) is a directory of LAPs that provide confidential services and support to judges, lawyers, and law students who are facing substance use disorders, or mental health issues. If you or someone you know needs assistance, contact your state or local LAP for further help.