

Practice Competently: Calm Your Brain, Regain **Your Focus**

Presented by Michelle Greer Galloway To Contra Costa County Bar Association October 6, 2020

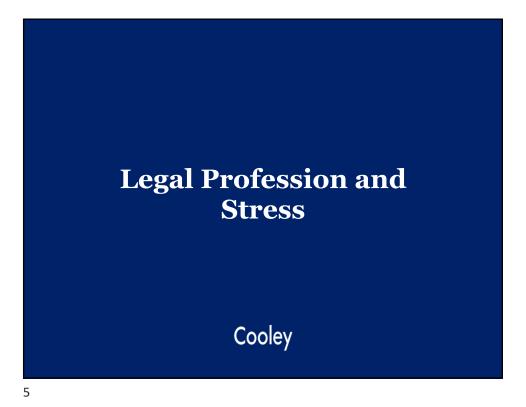
Your Presenter

- · Michelle Greer Galloway
 - · Of Counsel in the IP Litigation Practice Group of Cooley LLP
 - Lecturer in Law at Stanford University and Santa Clara University School of Law
 - Executive Committee, Litigation Section of California Lawyers Association
 - Past Chair, ABA Intellectual Property Section, Professional Ethics and Responsibility Committee
 - Contact Michelle at <u>mgalloway@cooley.com</u> or 650-843-5161 or michellesseminars@gmail.com
- · Special thanks to Susan Robinson, Lecturer in Law and Associate Dean for Career Services at Stanford Law School for contributions to the slides and permission to use



Overview

- Legal Profession and Stress
- Stress Your Brain and Body Need It
- When Stress Turns Physical
- Stress Happens How To Thrive Even In Times of Stress



THE EVIDENCE IS IN ON LAWYER WELL-BEING

We can no longer ignore our profession's well-being problem.
(Source: Krill et al., 2016; Mental Health Daily report of suicide by occupation)

28% report mild or higher depression symptoms. Higher stress symptoms. Highers for men; under age 30; and private practice, especially solo practitioners.

DEPRESSION
23% report mild or higher anxiety symptoms. Highest for women and solo practitioners.

SICIDE

Ranked #8 in a study of suicide by occupation. Rate is for women and solo practitioners.

https://lawyerwellbeing.net/lawyer-well-being-week/

Newest Study of Attorneys

- ABA and Hazelden Betty Ford Foundation study in 2016
 - "The study reports that 21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety. The study found that younger attorneys in the first 10 years of practice exhibit the highest incidence of these problems."
 - http://www.hazeldenbettyford.org/about-us/news-andmedia/press-release/aba-hazelden-release-first-studyattorney-substance-use

7

Things to Watch For

- Self-awareness, Other-awareness
 - Change this is how we usually observe through contrast with past behaviors
- Physical
 - More difficult in remote working environments
 - Slurred speech
 - Fatigue
- Social/emotional
 - Short tempered
 - Difficulty concentrating/lack of attention
 - Tension
 - Cynicism
 - Sense of inefficacy
 - Productivity changes (but be careful as can be many sources)

Burnout

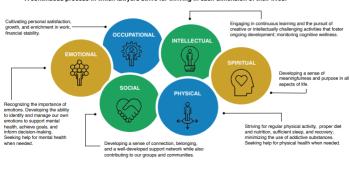
- State of exhaustion
 - Sense of reduced efficacy or accomplishment
 - Feelings of loss of identity

9

ABA National Task Force

 The Path To Lawyer Well-being: Practical Recommendations For Positive Change, The Report Of The National Task Force On Lawyer Well-being

Defining Lawyer Well-Being
A continuous process in which lawyers strive for thriving



Loneliness

- In a recent study on loneliness:
 - "In a breakdown of loneliness and social support rates by profession, legal practice was the loneliest kind of work, followed by engineering and science. This is perhaps not surprising, given the known high prevalence of depression among lawyers."
 - Shawn Achor, Gabriella Rosen Kellerman, Andrew Reece, and Alexi Robichaux, America's Loneliest Workers, Harvard Business Review (Mar. 19, 2018)
 - "Research shows that loneliness has the same effect as 15 cigarettes a day in terms of health care outcomes and health care costs." Id.

11

11

Model Rule 1.1 Competence

 "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Stress and Competence

- Decision Making
- Difficult Discussions

13

13

Model Rule 1.3 Diligence

- "Client-Lawyer Relationship
- A lawyer shall act with reasonable diligence and promptness in representing a client."

14

Model Rule 1.3 Comments - Procrastination

• "3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client."

15

15

Model Rule 1.4 Communication

- "(a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

16

Resources For Lawyers

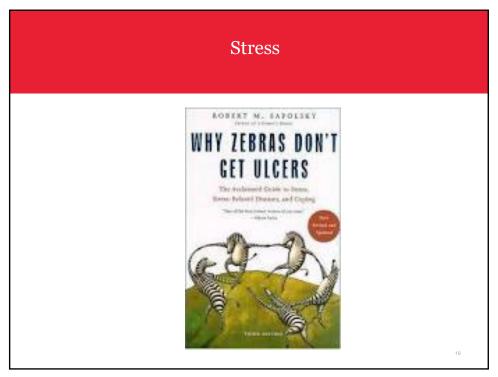
- Wellness General information
 - https://www.americanbar.org/groups/lawyer_assistance/workinggroup to advance well-being in legal profession/
 - "Toolkits" available for lawyers and employers at same site
- California Lawyers Association
 - · Health and Wellness Committee
 - https://calawyers.org/health-and-wellness/
- State Bar of California Lawyer Assistance Program
 - https://www.calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program

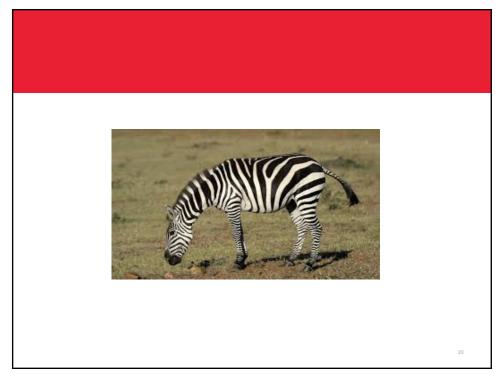
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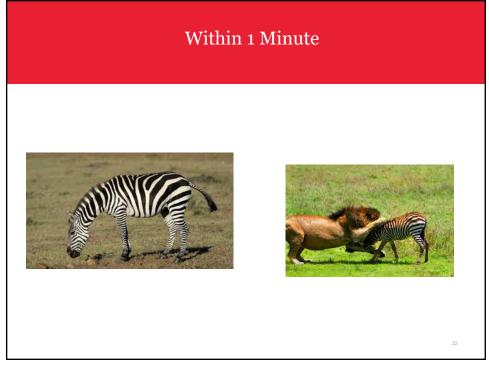
Stress – Why Your Brain and Body NEED It!

Cooley

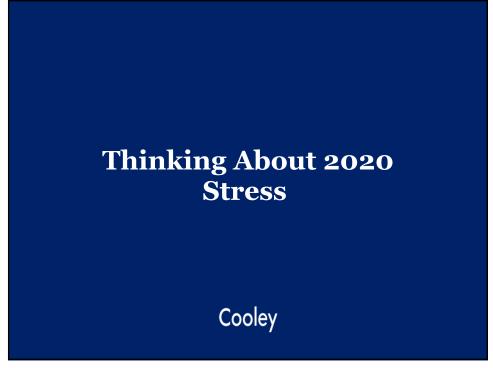












COVID-19: Why Stress Is Different

- · Existing problems did not vanish
 - COVID Pandemic/Health
 - Racial Injustice
 - Economic Toll
 - Natural Disasters
 - Election
 - Lack of privacy

25

Change at Home and Work

- · Roles at home changed
 - Educator
 - Caretaker
- · Work and way we worked changed
 - · Competing roles in one place
 - Video fatigue and stress
- Blended home and work lack of boundaries
 - Stress is contagious

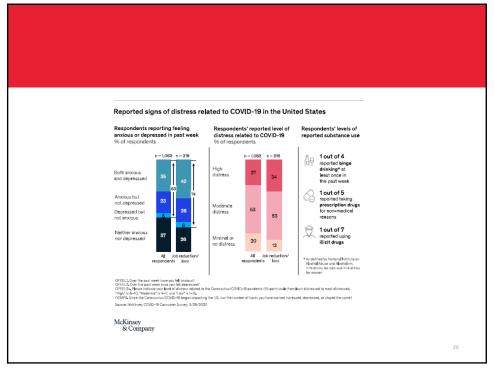
Change in Society

- Society
 - · Families cut-off from one another
 - Some in near- complete isolation
 - Milestones missed -- Birth, graduation, wedding, death
 - Racial injustice
 - · Structural or systemic racism
 - · Police brutality failure of equal justice under law

27

27





Racial Trauma

- Minority stress model holds that within a society, certain groups experience prejudice and discrimination, i.e., greater stress
 - That stress then leads to greater negative health outcomes
- COVID
 - Disproportionate health and learning impacts on communities of color
- Racial injustice
 - · Cumulative grief
 - · Renewed focus on system racism

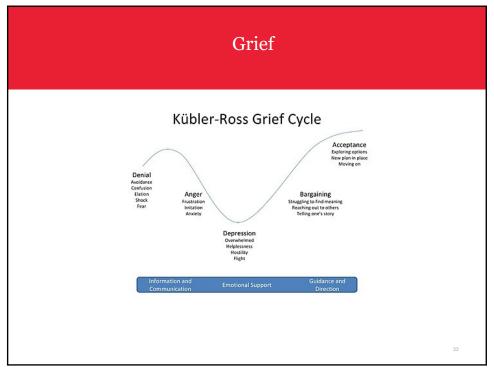
Natural Disaster Trauma

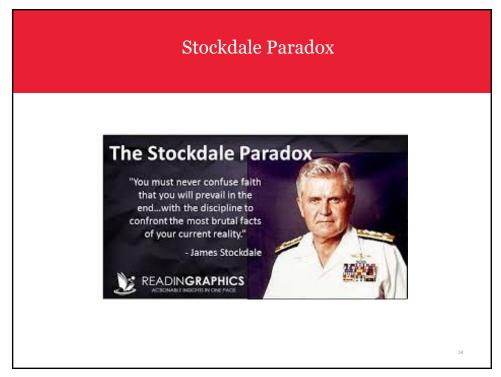
- "10-30 percent of wildfire survivors develop diagnosable mental-health conditions, including PTSD and depression."
- "Another 50 percent may suffer from serious subclinical effects that fade with time."
- "Substance abuse and domestic violence rise after natural disasters."
 - See Jacob Stern, A Mental-Health Crisis is Burning Across the American West, The Atlantic (July 2020) available at https://www.theatlantic.com/health/archive/2020/07/mental-health-aftermath-california-wildfires/608656/ (citing National Center for Post-Traumatic Stress Disorder)

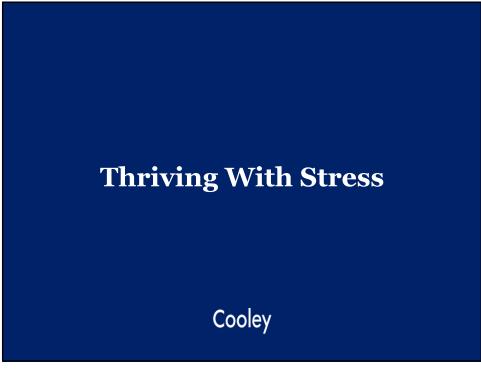
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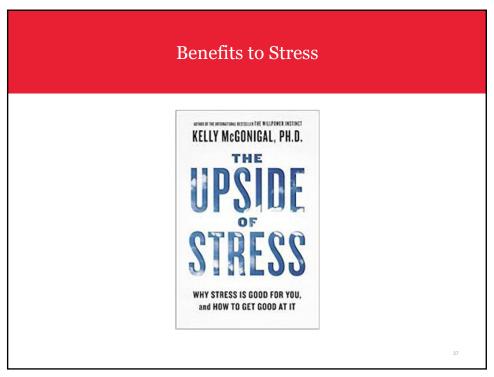
Self-actualization desire to become the most that one can be Esteem respect, self-estaem, status, recognition, strength, freedom Love and belonging friendship, intimacy, family, sense of connection Safety needs personal security, employment, resources, health, property Physiological needs air, water, food, shelter, sleep, clothing, reproduction https://www.simplypsychology.org/maslow.html



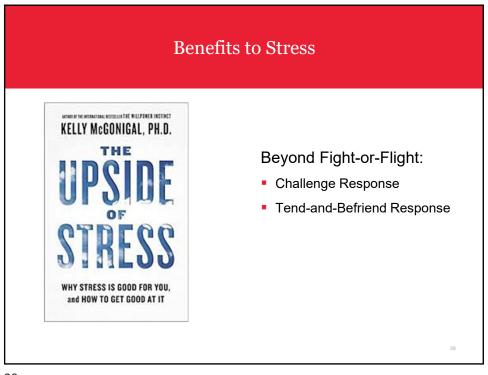




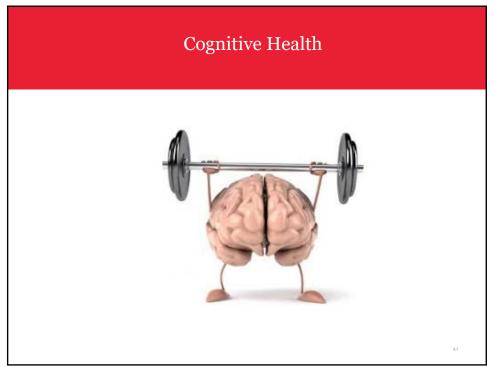






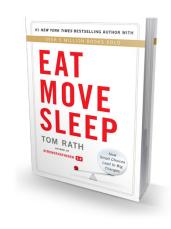


Common Advice and Programs Are Rejected Because – They Take Time Cooley





Literally: Eat Move Sleep



www.eatmovesleep.org/tools

43

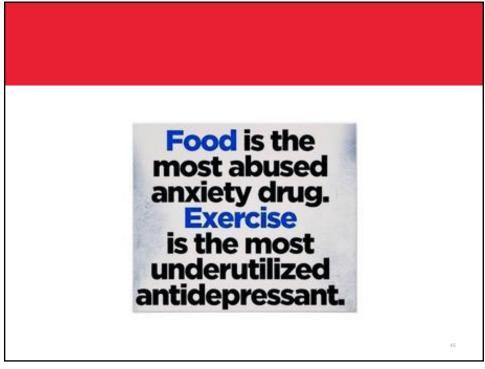
43

Eat: Nutrition Fuels Cognitive Performance

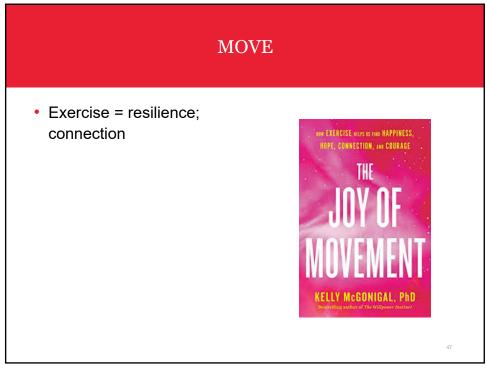
- The difference between needing a food and wanting a food
- Digesting excess sugars and fats
 - Stimulate the release of dopamine
 - · Reinforces future desire for the same food



44

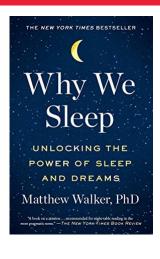


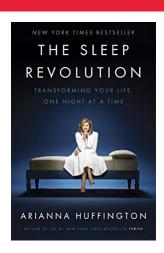












49

Sleep

- Sleep deprivation may reduce logical reasoning, executive function, attention and mood
- In study of 35,000 leaders, researchers found that "the more senior a person's role is, the more sleep they get."
 - Researches concluded that senior executives were more disciplined about getting sleep
 - See Rasmus Hougaard and Jacqueline Carter, Senior Executives Get More Sleep Than Everyone Else, Harvard Business Review (Feb. 28, 2018)



50

Sleep Deprivation

- · Who gets least sleep
 - 45-54 year old
- Sleep deprivation annual cost to US \$411 Billion
 - www.cdc.gov/sleep/data_statistics.html

51

51

Sleep Deficit

- 95% of adults use an electronic device that emits light in the hour before bed
- 50% check email overnight
- 60% adults 18-64 keep phones next to them when they sleep
- 50% claim they don't sleep well because they are always connected
 - See Adam Alter, Irresistible: The Rise of Addictive Technology and the Business of Keeping Us Hooked, at 69 (2017) (citing Arianna Huffington's work from the 2016 World Economic Forum and book The Sleep Revolution)

52





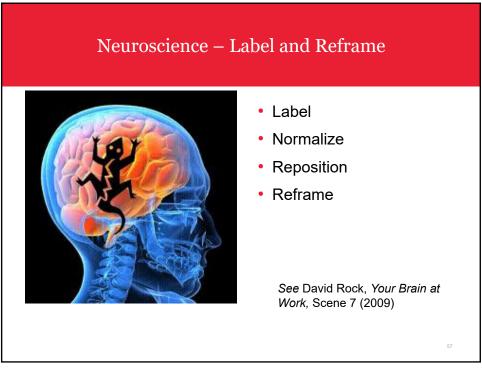
Pro Tips

- Write it down!
- Calendar it!
- · Share it with someone!

55

Emotional Regulation

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Mindfulness/Meditation

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59

Breath

- You Need it!
- In recent study of SKY Breath meditation (focused on calm and resilience; learned over several days) in veterans with trauma
 - Most beneficial
 - Normalize anxiety levels in one week
 - Continued mental health benefits for a full year
 - See Emma Seppala, Christina Bradley and Michael R. Goldstein, Research: Why Breathing Is So Effective At Reducing Stress, Harvard Business Review (Sept. 29, 2020)

60

Human "Being"

I am a human being, not a human doing.

Kurt Vonnegut

- Being
 - Awareness
 - Present moment
 - Without judgment

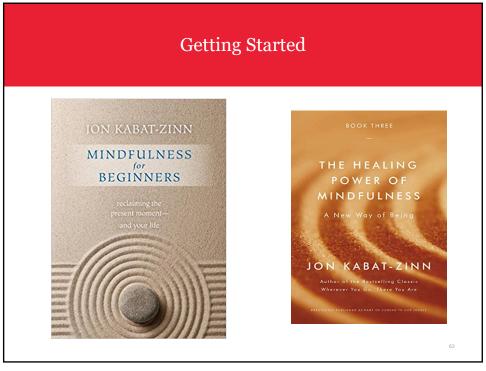
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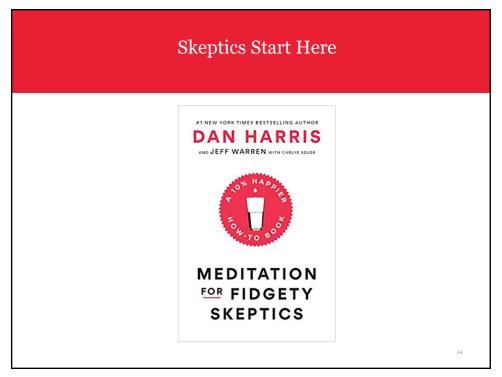
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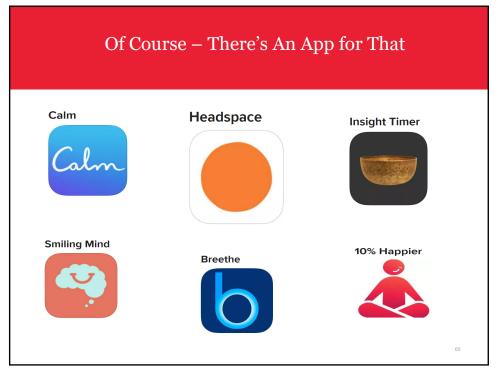
Mindfulness Changes Brain

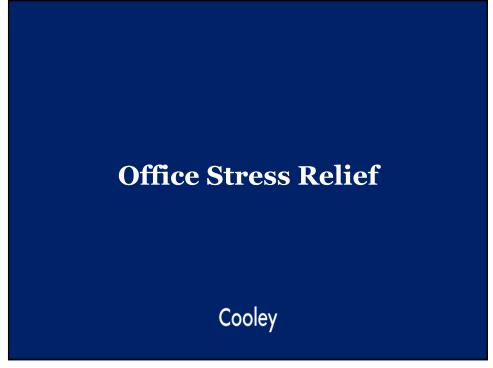
- Studies showing greater gray matter brain density after 8-week mindfulness course
 - See Holzel, Carmody, Vangel, Congleton, Yerramsetti, Gard, and Lazar, Mindfulness practice leads to increases in regional brain gray matter density, Psychiatry Res. Jan 30, 2011; 191(1): 36–43 (2011)

62













Desk Yoga

- Eye rolls
- Shoulder rolls
- Open chest stretch
- Neck stretch
- Chair twist
 - See Linda Steinberg, 6 Yoga Exercises You Won't Be Embarrassed to Do at Your Desk, HBR (Dec. 15, 2015)

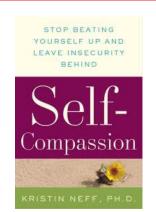
69

Other Techniques that Help the Brain Manage Stress

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Self Compassion

- Look at own shortcomings with kindness
 - Without judgment
 - Without disparagement
- Speak to yourself in times of difficulty or stress as you would speak to your best friend or child
 - · Acknowledge the difficulty
 - With language that is kind and gentle
 - With encouragement

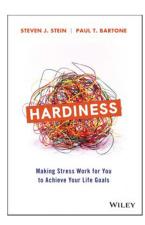


71

71

Hardiness Mindset

- Commitment
 - Sense of purpose
- Control
 - Action oriented; what you do makes a difference in outcome
- Challenge
 - Flexibility



72

Assess the Positive and Write It Down

- Who did I help today?
- What impact did I have on others today?
- What did I make progress on today?
- What am I grateful for?

73

73

New Hobbies?





Back in my day...
there was so much
toilet paper, people
used to literally string
it up in the trees of
their enemies

77

77

Playlist

- In research by Mindlab, listening to "Weightless," by Marconi Union
 - 65% reduction in overall anxiety
 - 35% reduction in resting heart rate
- Playlist top 10 songs for relaxation
 - https://open.spotify.com/playlist/31lxxIDyC3qYrtH6TpGFwx

78

Social Connection

- · Small acts of kindness
- Volunteering social connection

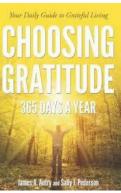


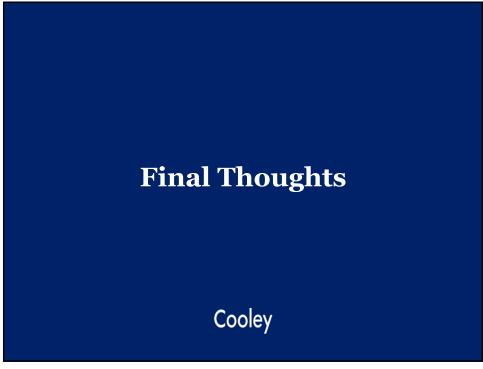
79

Gratitude

- Gratitude
 - See research summarized in F. Gino, Be Grateful More Often,

HBR Blog Network (Nov. 26, 2013)







Meaningful Choices

- Look backward protect special memories
- Look forward collect life experiences
- Look outward enhance wellbeing of others
 - Source C. Parker, Stanford psychologist explores how meaningfulness cultivates well-being over time, Stanford Report (Oct. 22, 2014) (summarizing research by professor Jennifer Aaker)
 - Note: contrast to most of the happiness/mindfulness literature that focuses on the 1) present 2) self

83

83

Conclusion

• These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes only and are not to be copied, used or distributed outside of this seminar without the express written consent of Michelle Galloway. Copyright Cooley LLP, Michelle Greer Galloway 2020.

Practice Competently: Calm Your Brain, Regain Your Focus Presented by Michelle Greer Galloway

My favorite references on this topic are marked in bold below with additional references listed.

Resource List

	<u>Resource List</u>	
Authors	Title of Book	Year
Achor, Shawn	The Happiness Advantage: The Seven Principles of Positive Psychology That Fuel Success and Performance at Work	
Alidina, Shamash	The Mindful Way Through Stress – The Proven 8-week Path to Health, Happiness, and Wellbeing	2015
Alter, Adam	Irresistible: The Rise of Addictive Technology and the Business of Keeping Us Hooked	2017
Amabile, Teresa; Kramer, Steven	The Progress Principle: Using Small Wins to Ignite Joy, Engagement, and Creativity at Work	2011
Autry, James A.; Pederson, Sally J.	Choosing Gratitude 365 Days A Year: Your Daily Guide to Grateful Living	2013
Brown, Brene	Rising Strong	1972
Covey, Stephen R.	Daily Reflections for Highly Effective People: Living the 7 Habits of Highly Effective People Every Day	1994
Duhigg, Charles	The Power of Habit	2012
Dweck, Carol S.	Mindset: The New Psychology of Success, How We Can Learn to Fulfill Our Potential	2006
Fogg, B. J.	Tiny Habits	
Hanson, Rick	Hardwiring Happiness: The New Brain Science of Contentment, Calm, and Confidence	2016
Harris, Dan	10% Happier	2014
Harris, Dan; Warren, Jeffrey; Adler, Carlye	Meditation for Fidgety Skeptics: A 10% Happier How-to Book	2017
Huffington, Arianna	The Sleep Revolution: Transforming Your Life, One Night at a Time	2016
Kabat-Zinn, Jon	Mindfulness for Beginners: Reclaiming the Present Moment—and Your Life	2012
Kabat-Zinn, Jon	The Healing Power of Mindfulness: A New Way of Being	2018
	J	l

Authors	Title of Book	Year
McGonigal, Kelly	The Upside of Stress: Why Stress Is Good for You, and How to Get Good at It	2015
McGonigal, Kelly	The Joy of Movement: How exercise helps us find happiness, hope, connection, and courage	2019
Neff, Kristin	Self-Compassion: Stop Beating Yourself Up and Leave Insecurity Behind	2010
Rath, Tom	Eat Move Sleep: How Small Choices Lead to Big Changes	2013
Rock, David	Your Brain at Work: Strategies for Overcoming Distraction, Regaining Focus, and Working Smarter All Day Long	2009
Sapolsky, Robert M.	Why Zebras Don't Get Ulcers: The Acclaimed Guide to Stress, Stress-Related Disease and Coping; 3rd ed.	1998
Schoen, Marc	Your Survival Instinct Is Killing You	2013
Schulte, Brigid	Overwhelmed: How to Work, Love, and Play When No One Has the Time	2015
Stein, Steven J.; Bartone, Paul T.	Hardiness: Making Stress Work for You to Achieve Your Life Goals	2020
Walker, Matthew	Why We Sleep: Unlocking the Power of Sleep and Dreams	2017
Zaki, Jamil	The War for Kindness: Building Empathy in a Fractured World	2019

Articles

Author	Title	Published By	Date
Achor, Shawn;	ReThinking Stress: The Role of Mindsets in	Journal Of	2013
Crum, Alia J.;	Determining the Stress Response	Personality And	
Salovey, Peter;		Social Psychology,	
		104(4), 716.	
Achor, Shawn;	America's Loneliest Workers	Harvard Business	Mar. 19,
Kellerman,		Review	2018
Gabriella Rosen;			
Reece, Andrew;			
Robichaux, Alexi			
Bailey, James R.	Why Leaders Don't Brag About Successfully	HBR	Oct. 29,
	Managing Stress		2014
Behson, Scott	Relax, You Have 168 Hours This Week	Harvard Business	Aug. 1,
		Review Network	2014

Author	Title	Published By	Date
Bernard, Phyllis E.	The Lawyer's Mind: Why a Twenty-First Century Legal Practice Will Not Thrive Using Nineteenth Century Thinking (With Thanks to George Lakoff)	25 Ohio State Journal on Dispute Resolution 165-200	2009
Bucy Pierson, Pamela; Hamilton, Ashley; Pepper, Michael; Root, Megan	Stress Hardiness and Lawyers	Journal of the Legal Profession, Vol. 42, 2018	Feb. 2018
Carmody, James; Congleton, Christina; Gard, Tim; Hölzel, Britta K.; Lazar, Sara W.; Vangel, Mark; Yerramsetti, Sita M.	Mindfulness Practice Leads To Increases In Regional Brain Gray Matter Density	Psychiatry Res. 191(1): 36–43	Jan 30, 2011
Cassens Weiss, Debra	Law is Second-Most Sleep Deprived Profession, Federal Survey Finds	ABA Journal	Feb. 27, 2012
Chesebrough, Christine; Cox, Christine; Davis, Josh; Rock, David	Why Insight Matters: How And Why The 'Aha!' Moment Is Central For Leading Behavior Change	Neuroleadership Journal , Vol. 6	Sept. 2015
Christoffad, Kalina; Dixon, Matthew L.; Ellamila, Melissa; Floman, James L.; Fox, Kieran C.R.; Nijeboera, Savannah; Rumaka, Samuel P.; Sedlmeierc, Peter	Is Meditation Associated With Altered Brain Structure? A Systematic Review And Meta- Analysis Of Morphometric Neuroimaging In Meditation Practitioners	Neuroscience & Biobehavioral Reviews Volume 43, 73	June 2014
Daicoff, Susan	Depression is Prevalent Among Lawyers But Not Inevitable	The Complete Lawyer	Dec. 2008
Ferreira, Charity	In Case of Emergency, Be Kind	Stanford Magazine	April 27, 2020
George, Bill	Developing Mindful Leaders for the C-Suite	HBR Blog Network	March 10, 2014
Gino, Francesca	Be Grateful More Often	HBR Blog Network	Nov. 26, 2013
Hougaard, Rasmus; Carter, Jacqueline	Senior Executives Get More Sleep Than Everyone Else	Harvard Business Review	Feb. 28, 2018
Hutchins Coe, Erica; Enomoto, Kana	Returning To Resilience: The Impact Of COVID-19 On Mental Health And Substance Use	McKinsey & Company	April 2, 2020
Keeter, Scott	A Third of Americans Experienced High Levels of Psychological Distress During The Coronavirus Outbreak	Pew Research Center	May 7, 2020

Author	Title	Published By	Date
Khazan, Olga	Humans Are Too Optimistic To Comprehend The Coronavirus Why Americans Didn't See This Pandemic Coming	The Atlantic	April 23, 2020
Krieger, Lawrence	Institutional Denial About the Dark Side of	Journal of Legal	2002
S.	Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence	Education (52 J. Legal Educ. 112)	
Krieger, Lawrence S.; Sheldon, Kennon M.	What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers	FSU College of Law available on SSRN	Feb. 20, 2014
McLeod, Saul	Maslow's Hierarchy of Needs	Simply Psychology	updated March 20, 2020
Organ, Jerome M.	What Do We Know About the Satisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being	8 Univ. of St. Thomas L. J. 225	2011
Parker, Clifton B.	Stanford Psychologist Explores How Meaningfulness Cultivates Well-being Over Time	Stanford Report	Oct. 22, 2014
Reynolds, Gretchen	A Single Session of Exercise Alters 9,815 Molecules in Our Blood	The New York Times	June 10, 2020
Robinson, James Gray	4 Exercises To Improve Your Legal Abilities In 2020	ABA Journal	Jan. 2, 2020
Seppala, Emma; Bradley, Christina; Goldstein, Michael R.	Research: Why Breathing is So Effective at Reducing Stress	Harvard Business Review	Sept. 29, 2020
Shaffer, Joyce	Neuroplasticity and Positive Psychology in Clinical Practice: A Review for Combined Benefits	Psychology	Dec. 2012
Simpson, Dave	GCs Report Burnout, Longer Hours During Pandemic	Law360	June 11, 2020
Steinberg, Linda	6 Yoga Exercises You Won't Be Embarrassed to Do at Your Desk	Harvard Business Review	Dec. 15, 2015
Stern, Jacob	A Mental-Health Crisis is Burning Across the American West	The Atlantic	July 2020
Stillman, Jessica	Just 4 Seconds of Exercise Counteracts the Terrible Effects of Sitting All Day	INC.com	May 22, 2020
Walton, Alice G.	Eat, Smoke, Meditate: Why Your Brain Cares How You Cope	Forbes	Sept. 21, 2011

Ted Talks and Other Websites

Authors	Title	Date	Link
ABA	ABA Lawyer Wellness		http://www.calbar.ca.gov/Attorneys
	Resources		/Attorney-Regulation/Lawyer-
			Assistance-Program/Resources
ABA	The Path To Lawyer Well-	2018	https://www.americanbar.org/grou
	being: Practical		ps/lawyer assistance/task force rep
	Recommendations For		ort/
	Positive Change, The Report		

	Of The National Task Force On Lawyer Well-being		
Cal Bar LAP	California Bar Lawyer Assistance Program (LAP)		http://www.calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program/Resources
CDC	Sleep Studies	2014	https://www.cdc.gov/sleep/data_stat istics.html
CLA	California Lawyers Association Health and Wellness Committee		https://calawyers.org/health-and- wellness/ - I really like some of the resources on this one
Krill, Patrick R.; Albert, Linda	ABA and Hazelden Study in 2016	2016	http://www.hazeldenbettyford.org/ about-us/news-and-media/press- release/aba-hazelden-release-first- study-attorney-substance-use
Krill et al.	Mental Health Daily report of suicide by occupation	2016	https://lawyerwellbeing.net/lawyer-well-being-week/
Lliff, Jeff	One More Reason To Get A Good Night's Sleep	Sept. 2014	https://www.ted.com/talks/jeff_iliff_ one_more_reason_to_get_a_good_nig ht_s_sleep
McGonigal, Kelly	Make Stress Your Friend	2013	https://www.ted.com/talks/kelly m cgonigal how to make stress your f riend