 <small>attorney advertisement Copyright © Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304. The content of this packet is an introduction to Cooley LLP's capabilities and is not intended, by itself, to provide legal advice or create an attorney-client relationship. Prior results do not guarantee future outcome.</small>	<h2>Practice Competently: Calm Your Brain and Regain Your Focus</h2> <p>Presented to ACC-San Diego By Michelle Greer Galloway May 5, 2021</p>
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<h2>Your Presenter</h2>
<ul style="list-style-type: none">• Michelle Greer Galloway<ul style="list-style-type: none">• 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 mgalloway@cooley.com or 650-843-5161 or michelleseminars@gmail.com• For information about seminars Michelle offers, go to https://www.cooley.com/people/michelle-galloway and click on the red box.• 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

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Reminder

"If you don't
make time for
your wellness
you will be
forced to make
time for your
illness."

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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

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Legal Profession and Stress

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Lawyers Suffer

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)

<div>36%</div> <p>ALCOHOL 21-36% qualify as problem drinkers. Higher for men; under age 30; and private practice, especially solo practitioners.</p>	<div>28%</div> <p>DEPRESSION 28% report mild or higher depression symptoms. Highest for men and solo practitioners.</p>	<div>23%</div> <p>STRESS 23% report mild or higher stress symptoms. Highest for women and solo practitioners.</p>	<div>19%</div> <p>ANXIETY 19% report mild or higher anxiety symptoms. Highest for women and solo practitioners.</p>	<div>TOP 10</div> <p>SUICIDE Ranked #8 in a study of suicide by occupation. Rate is 1.33 times the national norm.</p>
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<https://lawyerwellbeing.net/lawyer-well-being-week/>

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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-and-media/press-release/aba-hazelden-release-first-study-attorney-substance-use>

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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)

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Burnout

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

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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 in each dimension of their lives:

The diagram consists of six colored circles arranged in a hexagonal pattern, each representing a dimension of lawyer well-being. Each circle is connected to a descriptive text box by a line. The dimensions and their descriptions are:

- OCCUPATIONAL** (blue circle with a gear icon): Cultivating personal satisfaction, growth, and enrichment in work; financial stability.
- INTELLECTUAL** (green circle with a lightbulb icon): Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.
- SPIRITUAL** (yellow circle with a heart icon): Developing a sense of meaningfulness and purpose in all aspects of life.
- PHYSICAL** (blue circle with a person icon): Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances. Seeking help for physical health when needed.
- SOCIAL** (green circle with a handshake icon): Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.
- EMOTIONAL** (yellow circle with a flower icon): Recognizing the importance of emotions. Developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform decision-making. Seeking help for mental health when needed.

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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.*

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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.”

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Stress and Competence

- Decision Making
- Difficult Discussions

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Model Rule 1.3 Diligence

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

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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.”

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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.”

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Resources For Lawyers

- Wellness – General information
 - https://www.americanbar.org/groups/lawyer_assistance/working-group_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!

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Stress

ROBERT M. SAPOLSKY
Author of A Primate's Memoir

**WHY ZEBRAS DON'T
GET ULCERS**

The Acclaimed Guide to Stress, Stress-Related
Diseases, and Coping—Now Revised and Updated

"One of the best science writers of our time."
—Oliver Sacks




THIRD EDITION

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Stress



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Stress



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Within 1 Minute



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Stress Response

Fight



Flee




Freeze



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Only Humans Choose



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What is Stress?

- Reaction to a challenge

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Stress Hormones

- Adrenaline -- increases heart rate, elevates your blood pressure
- Cortisol -- increases sugars (glucose) in the bloodstream; curbs the nonessential systems
- Norepinephrine – more alert/awake; shifts blood to essential organs

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Thinking About 2020 Stress

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COVID-19: Why Stress Is Different

- Existing problems did not vanish
 - COVID pandemic/health
 - Racial injustice
 - Economic toll
 - Natural disasters
 - Election
 - Lack of privacy

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Changes at Home and Work

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

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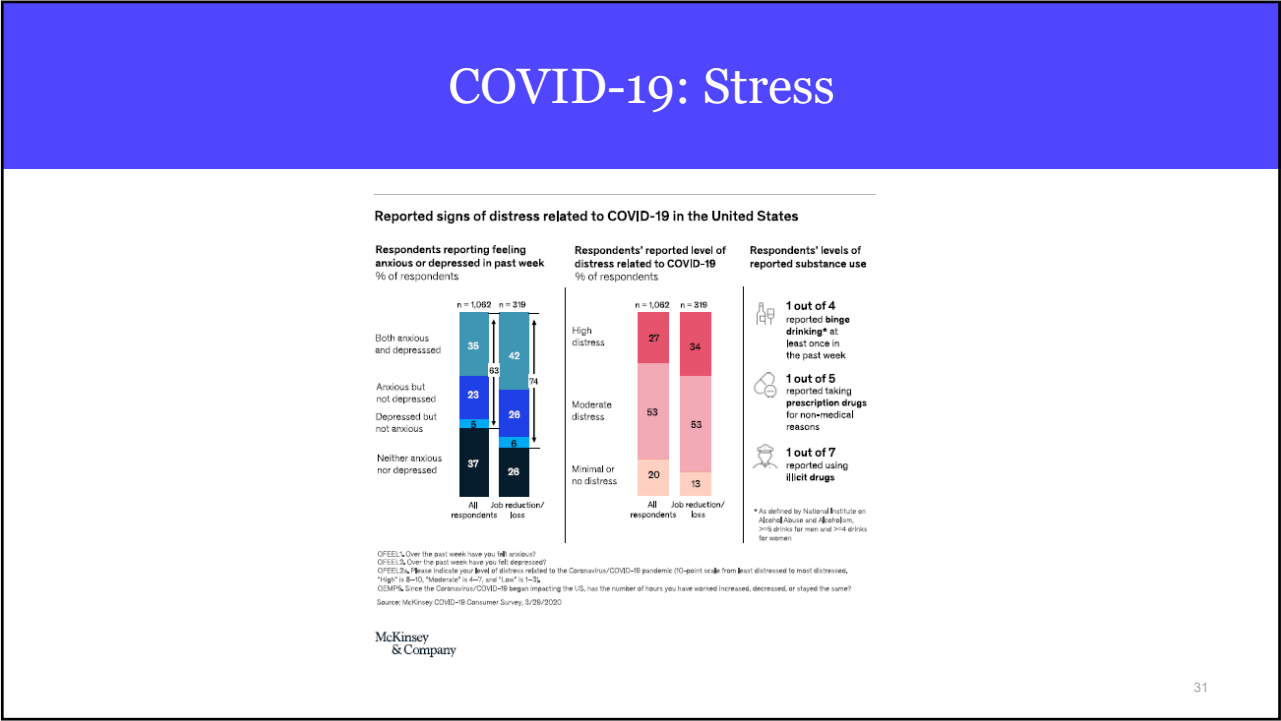
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Changes in Society

- 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

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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-19
 - Disproportionate health and learning impacts on communities of color
- Racial injustice
 - Cumulative grief
 - Renewed focus on system racism

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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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Maslow’s Hierarchy



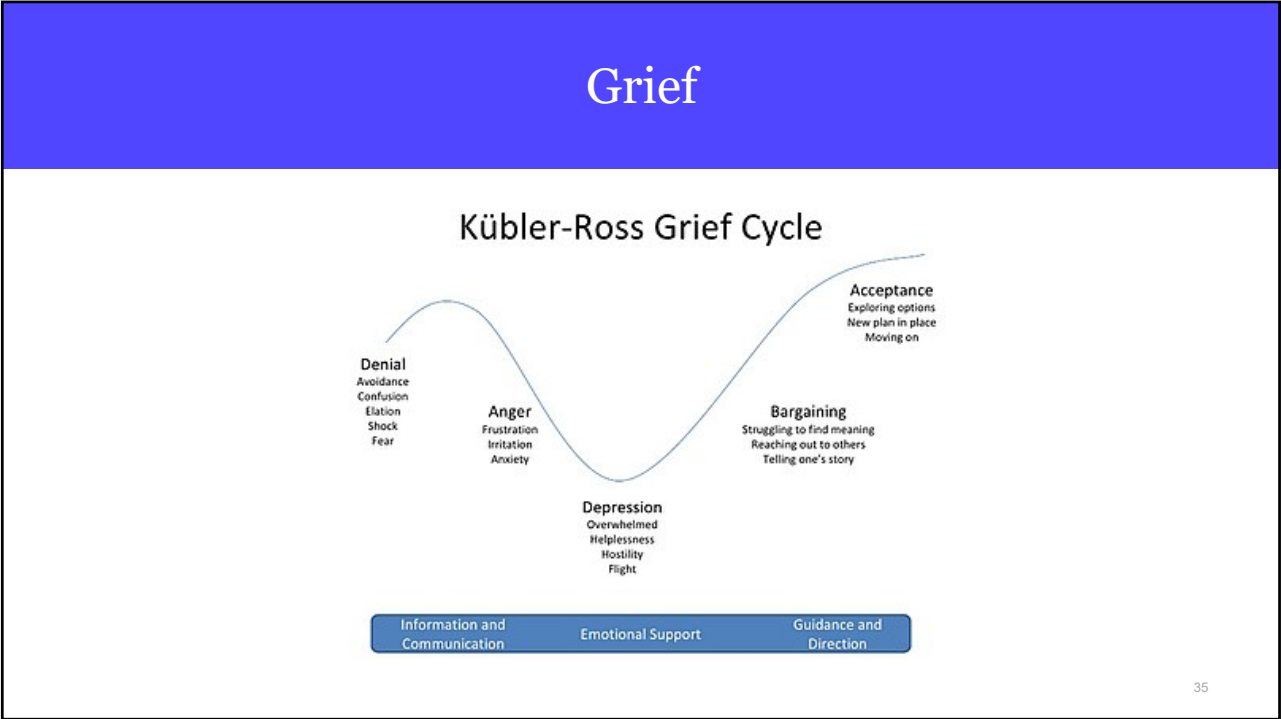
The diagram is a pyramid divided into five horizontal sections, each with a different color and text. From top to bottom: 1. Self-actualization (blue): desire to become the most that one can be. 2. Esteem (green): respect, self-esteem, status, recognition, strength, freedom. 3. Love and belonging (yellow): friendship, intimacy, family, sense of connection. 4. Safety needs (orange): personal security, employment, resources, health, property. 5. Physiological needs (red): air, water, food, shelter, sleep, clothing, reproduction.

Level	Need	Associated Concepts
1	Self-actualization	desire to become the most that one can be
2	Esteem	respect, self-esteem, status, recognition, strength, freedom
3	Love and belonging	friendship, intimacy, family, sense of connection
4	Safety needs	personal security, employment, resources, health, property
5	Physiological needs	air, water, food, shelter, sleep, clothing, reproduction

<https://www.simplypsychology.org/maslow.html>

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Thriving With Stress

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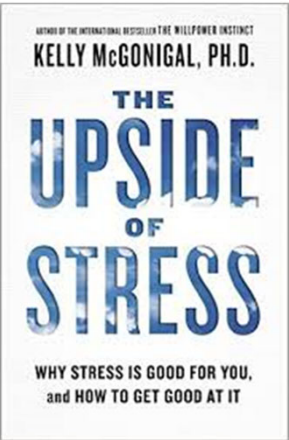
Stress



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Benefits to Stress



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Stress Can Enhance Performance



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Moderate Stress Can Help

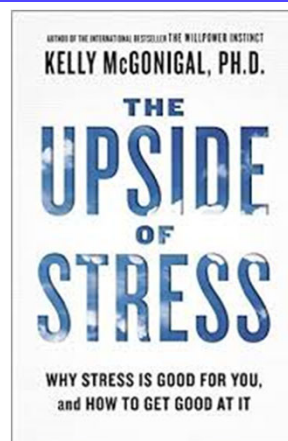
- Improve
 - Motivation
 - Alertness
 - Performance
 - Memory

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Benefits to Stress

Beyond Fight-or-Flight:

- Challenge Response
- Tend-and-Befriend Response



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Auto Pilot



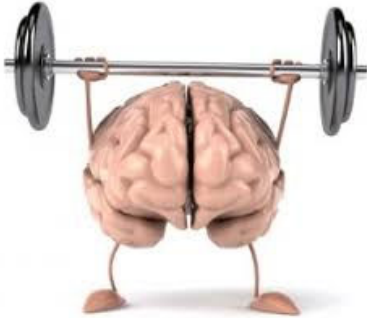
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**Common Advice and
Programs Are Rejected
Because – They Take Time**

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Cognitive Health



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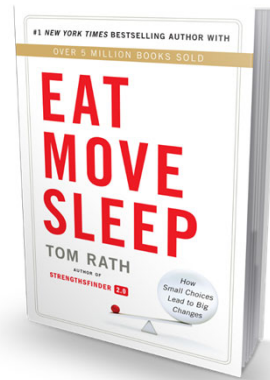
Most Common Advice




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Literally: Eat Move Sleep

- www.eatmovesleep.org/tools



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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



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Reminder

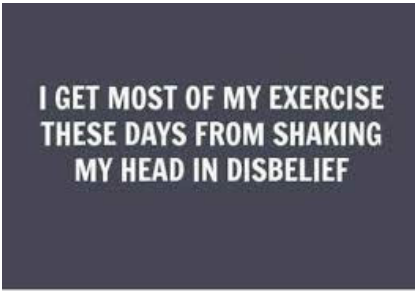


Food is the most abused anxiety drug.
Exercise is the most underutilized antidepressant.

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Exercise

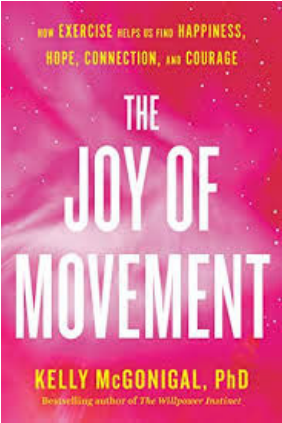


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MOVE

- Exercise = resilience; connection



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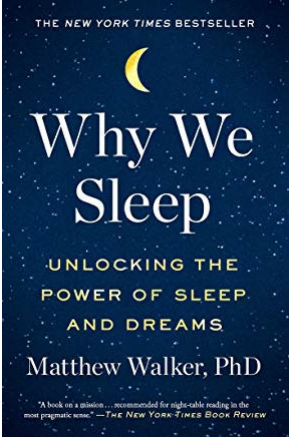
Sleep



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Sleep Research

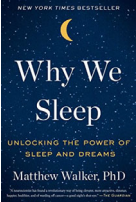


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Sleep

- 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)



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Sleep Deprivation

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

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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*)

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Get a Dog (Pet)



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Why Don't We Take Good Advice



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Pro Tips

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

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Emotional Regulation

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Neuroscience – Label and Reframe

- Labeling
 - Disrupt the amygdala
- Reframing



- Label
- Normalize
- Reposition
- Reframe

See David Rock, *Your Brain at Work*,
Scene 7 (2009)

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Reminder



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Reposition

- Will I remember this/are about this in:
 - 1 week
 - 1 month
 - 1 year
- How much energy are you willing to expend?

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Parable of the Two Arrows

- “Pain is inevitable. Suffering is optional.”
- “Your worst enemy cannot harm you as much as your own unguarded thoughts.”
 - Buddha

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Mindfulness/Meditation

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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)

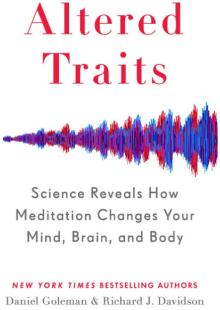
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Mindfulness Increases Neuroplasticity

- “Neurons that fire together, wire together.” Hanson
- Negativity bias: “Our brains are like Velcro for the negative and Teflon for the good.” Hanson
- Hope! Our brains continue to change and we can create new neural pathways
- What we do and practice gets stronger

Altered
Traits



Science Reveals How
Meditation Changes Your
Mind, Brain, and Body

NEW YORK TIMES BESTSELLING AUTHORS
Daniel Goleman & Richard J. Davidson

NEW YORK TIMES BESTSELLER

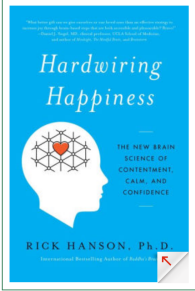
Daniel J. Siegel, MD

AWARE

The Science and
Practice of Presence

THE GROUNDBREAKING
MEDITATION PRACTICE

Hardwiring
Happiness



THE NEW BRAIN
SCIENCE OF
CONTENTMENT,
CALM, AND
CONFIDENCE

RICK HANSON, Ph.D.

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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)

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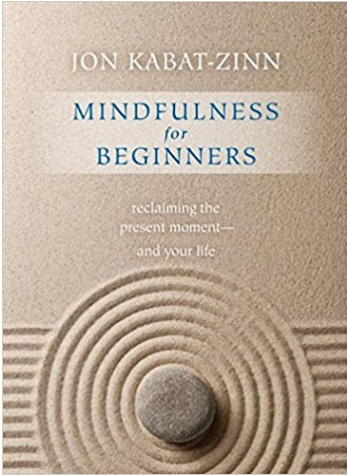
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Getting Started

JON KABAT-ZINN

MINDFULNESS
for
BEGINNERS

reclaiming the
present moment—
and your life



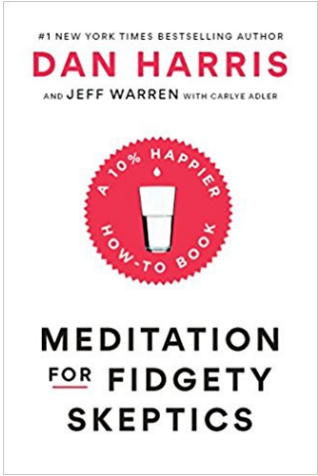
#1 NEW YORK TIMES BESTSELLING AUTHOR

DAN HARRIS

AND JEFF WARREN WITH CARLYE ADLER

A 10% HAPPIER
HOW-TO BOOK

MEDITATION
FOR FIDGETY
SKEPTICS




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Of Course – There’s An App for That


Calm




Headspace




Insight Timer




Smiling Mind



Breethe



10% Happier



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Office Stress Relief

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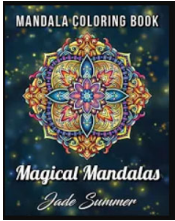
Office Stress Relief



Panic Peet



Teacher Peach
Motivational
Stress Balls



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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)

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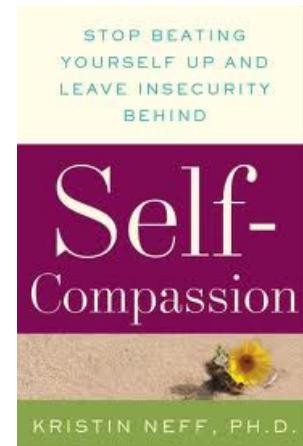
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Other Techniques that Help the Brain Manage Stress

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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



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New Hobbies?

- Do you have a hobby that you enjoy? Put it in the chat room

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Reminder

Whoa, this is a lot of
days in a row to have
to make dinner.



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Corona Lisa

Corona Lisa



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Reminder

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

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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>

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Social Connection

- Small acts of kindness
- Volunteering – social connection

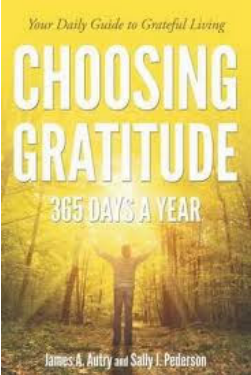
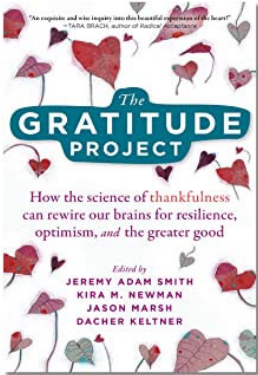


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Gratitude

- Gratitude
 - See research summarized in F. Gino, *Be Grateful More Often*, HBR Blog Network (Nov. 26, 2013)



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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>

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Final Thoughts

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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?

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Questions?

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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 2021.

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