

MINDFULNESS TRAINING IN THE SANTA CLARA COUNTY JUDICIAL SYSTEM:  
A REPORT ON A SERIES OF WORKSHOPS FOR JUDGES, PROSECUTORS, AND PUBLIC  
DEFENDERS

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I. Introduction

Many of the judges and lawyers who have participated in mindfulness workshops in the past decade have benefited significantly from their mindfulness practice. However, there has been no specific focus on the work of lawyers and judges in the criminal process. In preparation for the Mindful Justice conference<sup>1</sup>, we undertook a number of workshops to explore mindfulness with the judges, prosecutors, and defense counsel who play a central role in the criminal process—in criminal trials, in the plea bargaining process, in sentencing—in order to determine their receptivity to mindfulness practice and its relevance to their work.

As we began to look for communities of judges, prosecutors and public defenders who might be interested in exploring mindfulness in connection with their work, our connections in the bench and bar in the Bay Area led us to San Jose, the county seat of Santa Clara County. San Jose is a large and complex metropolis with more than 1 million residents, and it is the county seat of a diverse and large County, which encompasses rural and suburban areas as well as large urban centers. It is racially diverse and encompasses extremes of wealth and poverty.

Our preliminary inquiry revealed that the trial judges, the District Attorney's office, and the Public Defender's office were all interested in participating in our mindfulness workshops. Over the course of the past summer we held a four-hour workshop for the district attorney, Jeffrey Rosen, and his senior assistants, then a four-hour workshop for 11 Santa Clara County trial judges, and then a two-hour workshop, shortened to accommodate their available time, with the Public Defender, Molly O'Neal, and 19 members of her office. The workshops for prosecutors and public defenders were co-taught by Charlie Halpern<sup>2</sup> and Ron Tyler<sup>3</sup>; the workshop for judges was taught by Ron Greenberg<sup>4</sup>, Halpern, and Tyler.

In each case, these busy professionals committed a significant amount of time to this project for two reasons—to support an inquiry which they felt had some promise for improving the quality of criminal justice broadly, and to test out the question of whether mindfulness might improve the quality of their offices' performance and make their law professionals more effective in their work and less stressed in their lives.

The three workshops had a number of things in common:

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<sup>1</sup> This paper was written as part of a conference titled *Mindful Justice: Creating a Criminal Justice System Grounded in Mindfulness, Compassion, and Human Dignity*, held at the Fetzer Institute's Seasons conference center in September 2015. It explores the potential for transforming the criminal justice system by fostering inner change among those who operate the system, and those who are caught in it.

<sup>2</sup> Co-director, Mindful Justice project. Founder of the Berkeley Initiative for Mindfulness in Law at Berkeley Law and an experienced leader of mindfulness programs for law students, lawyers and judges.

<sup>3</sup> Associate Professor and Director, Criminal Defense Clinic, Stanford Law School.

<sup>4</sup> Superior Court Judge (Ret.), Alameda County.

- Each of the workshops was offered for professional educational credit for each of the participants, recognizing mindfulness was a skill which was relevant to effective performance in the advocates or judges role.
- In each case, the fact that the facilitators of the workshops and the Mindful Justice project were connected with Stanford Law School and Berkeley Law probably made this unconventional activity seem more professionally appropriate.
- In each of the workshops, the great majority of the participants had little or no experience with mindful meditation, although some had experience with other contemplative practices, through prayer, yoga, sports, and time in nature.
- In the course of the workshops, most participants were called on to undertake unfamiliar activities – the practice of qi gong, a moving meditation form for working with energy; time spent in silent, mindful stillness with the eyes shut, observing the flow of thoughts and feelings. They were invited to participate in intense interactions with other members of their working community in which they discussed challenging work experiences that left them feeling uncertain, anxious, or vulnerable. After a period of adjustment, the participants in the workshop willingly, and even enthusiastically, undertook these activities, noting the good feelings that flowed from their being present more fully in their bodies. Their participation in mindfulness practices in advance made them more willing to undertake exercises that would have been uncomfortable if not held in the framework of mindfulness.
- In each of the three workshops, most of the participants ended with a feeling of satisfaction and insight, and the belief that they had acquired in this brief period of time a set of skills that they would find useful in discharging their responsibilities.
- The value of synergy: the leadership in each of the three groups (prosecutors, public defenders, judges) were impressed that the other groups were engaging in these workshops, and they spontaneously suggested that it would be interesting to bring the groups together to think about how mindfulness could not only affect their individual professional work and the culture of their workplace, but how mindfulness could affect the way that they came together in the courtroom. They discussed the ways that the courtroom experience could be more satisfying for all of the participants in the legal process and, potentially, offer a set of legal outcomes that could enhance the effectiveness of the criminal justice process in the county. The district attorney, the public defender, and a senior trial judge are planning on coming together with the facilitators of these workshops to discuss future explorations of the mindfulness work as it might affect the interactions of their offices in the courtroom.
- The seriousness and depth of the conversations in each of the three workshops

was striking. For a group of people trained in law with its insistence on rationality, on valuing mastery, and its unwillingness to betray weakness, the participants in these workshops were strikingly willing to embrace unfamiliar practices and to be more self-disclosing than lawyers normally allow themselves to be. The facilitators were impressed with these qualities and with the high level of professionalism and commitment to fairness and justice shown by all of the workshop participants.

In all respects, the three Santa Clara workshops exceeded our expectations. Many of the participants from the three groups committed to bring back into their offices some new ideas about how mindfulness could affect their work— how experienced lawyers would supervise the younger attorneys in their office, how judges would engage with “routine” cases, how prosecutors would weigh information in deciding how to charge a suspect. We took away from these workshops the view that a modest exposure to mindfulness practices could be received with serious attention and receptivity by seasoned professionals, with a surprising willingness to think about how to modify and improve their practices with the goal of building more fairness, attention, and respect into their work.

We want to be careful not to overstate what these workshops demonstrated. This was a small group of people and they did not undertake a long-term commitment to cultivating mindfulness or applying it in their work. And it is likely that the San Francisco Bay area is among the geographical areas that would be most receptive to these practices. Still, we could see, in this microcosm, the ways in which prosecutors, defense counsel, and judges might interact mindfully in a fashion that could dramatically alter the crucial adjudicative component of the criminal justice process. This is an exciting prospect and demands deeper and more systematic attention.

**Charlie Halpern**  
Co-Director  
Mindful Justice

## **PART 1: TRIAL JUDGES**

### **I. Introduction**

The practice of mindfulness has been spreading in the legal field over the last decade, and at least one prominent judicial figure—U.S. Supreme Court Justice Stephen Breyer—has stated that a regular meditation practice has been a factor in maintaining his continued good health and effectiveness as a justice.<sup>5</sup> So far, this has not led to a breakthrough in judicial uptake of mindfulness, but in recent years groups of judges in both the United States and Canada have demonstrated receptiveness to the practice.

This paper focuses on the results of a half-day mindfulness workshop presented in July 2015 to a group of 11 trial judges currently sitting on the Santa Clara County Superior Court in Northern California. Overall, the judges in the Santa Clara County pilot workshop were very receptive to learning about mindfulness, and optimistic that it could enhance their work through improved stress management, greater focus, and deeper empathy for all the parties in the courtroom. After the workshop, Santa Clara County Superior Court officials asked the facilitators to return and present further mindfulness workshops for another group of California trial judges, which one facilitator did in the weeks following the initial event.

While the Northern California pilot group is not necessarily representative of judges in other jurisdictions, the enthusiasm of this group, as well as other judges recently trained in Canada and elsewhere in the U.S., suggests that mindfulness could be an important skill with broad appeal in the judicial community and significant impact on the atmosphere and outcomes in courtrooms across the country.

### **II. A brief history of mindfulness for judges**

In the last decade, mindfulness has become increasingly accepted in law settings, including law schools and law firms, as a way to help manage stress, improve concentration, and develop emotional intelligence. For judges, who often face daunting caseloads, the need to focus intently on complex argument for hours at a stretch, and emotionally taxing cases (particularly those judges with criminal dockets), mindfulness holds the promise of reduced stress, lessened effect of implicit bias, increased wellbeing, and greater effectiveness.

In researching this paper, the authors learned of a few previous instances of mindfulness workshops for judges, although there may well be more. Perhaps most famously, in 1987 Jon Kabat-Zinn, the founder of Mindfulness-Based Stress Reduction (MBSR), taught an 8-week MBSR course to a group of trial judges in Western Massachusetts.<sup>6</sup> As Kabat-Zinn relates in his 2006 book *Coming to Our Senses*, one judge who completed the training, Richard Connon, later drew on his mindfulness training in delivering these unusual jury instructions in a contentious jury trial:

It is important that you understand the elements of the case. It is also important that you pay attention with the terminology that I became aware of some time ago of

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<sup>5</sup> Enayati, Amanda. "Seeking serenity: when lawyers go Zen." CNN.com (May 11, 2011).

<sup>6</sup> Rogers, Scott. "Mindfulness in Law," Chapter 27 in *The Wiley Blackwell Handbook of Mindfulness*.

mindful meditation. Mindful meditation is a process by which you pay attention from moment to moment to moment. It is also important that you maintain an open mind, that you make no determination on this case until all the evidence has been submitted for your consideration.<sup>7</sup>

Judge Connon was a pioneer in integrating mindfulness not only into his own life, but also weaving it into his courtroom.

In the 1990s, Ron Greenberg, a dedicated meditation practitioner who was then a judge presiding over a drug court in Alameda County, California, went a step further one day by inviting all those in the courtroom—bailiffs, clerks, team of social workers, police officers, clients (accused felony drug offenders), attorneys—into a few minutes of silence, which he felt he needed in the midst of a stressful and non-stop day. He did not give instructions other than to say that they could close their eyes or keep them open. The lights were dimmed. Five minutes passed and then court resumed. He started court session in the same way thereafter for four years. After rotating off the bench, a client knocked on the successor judge's chambers door, asking whether the group could sit quietly for 5 minutes before the judge came into the courtroom. "They truly valued the opportunity for silence and stillness," Greenberg later recalled.<sup>8</sup> The atmosphere of the courtroom shifted, it introduced greater collegiality, compassion, focus, deeper listening, sense of physical wellbeing and emotional stability to the proceedings.<sup>9</sup>

Since then, Greenberg and Charlie Halpern, the founder of the Berkeley Initiative for Mindfulness in Law, have been involved in offering several workshops for judges in the U.S. and Canada. Most recently, in March 2015 the two taught a series of mindfulness workshops to Canadian trial judges as part of a three day retreat called "Survive and Thrive: Optimizing Judicial Productivity" convened by the National Judicial Institute of Canada. The mindfulness teachings focused on helping judges deal with overwhelming caseloads without succumbing to stress and anxiety, and equipping them with tools to enhance their resilience and focus. Based on contemporaneous comments and post-workshop evaluations, the judges were overwhelmingly positive about the usefulness of the training, and many committed to implementing a daily mindfulness practice. NJI has already enlisted Greenberg and Halpern to offer a series of follow-up webinars and to repeat the program in 2016.

As a follow-up to the July 15 workshop, Greenberg was asked by the Honorable Judge Patricia Lucas (Associate Dean of the California Judicial College) to teach mindfulness, using guided meditation and a listening exercise, to approximately 90 recently appointed judges at this year's two-week Judicial College. Greenberg reports that the judges were engaged and saw real value in incorporating mindfulness practices in their new career. The receptivity by those with no meditation experience was much greater than anticipated.

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<sup>7</sup> Kabat-Zinn, Jon. *Coming To Our Senses: Healing Ourselves and the World Through Mindfulness*. Hyperion, 2005 at 454.

<sup>8</sup> Greenberg, R., *Why I Meditate*, 43 *The Marin Lawyer* 6, 14 (February 2012).

<sup>9</sup> Ron Greenberg's comments in "Mindfulness in the Criminal Justice System: A Panel Discussion at Berkeley Law." Video on Youtube. See also, Greenberg, Ron. "Now and Zen."

### III. July 2015 workshop background

As key players in the criminal process, judges have an important influence on the courtroom experience and on legal outcomes. Could they benefit from mindfulness training themselves, and translate those benefits into greater objectivity, more judicious sentences, more accurate decisions? The workshop sought to explore these questions and others in at least a preliminary way.

The three facilitators were long-term law practitioners and teachers, and advocates of applying mindfulness to the education and training of lawyers.<sup>10</sup> The workshop was made possible through the assistance of the Hon. Patricia Lucas, supervising judge of the Superior Court's civil division. Judge Lucas, a graduate of Berkeley Law, learned of Charlie Halpern's mindfulness in law work at Berkeley Law and arranged for him and his colleagues to offer mindfulness training to her fellow judges. Judge Lucas also knew Ron Tyler through the Ingram Chapter of the American Inns of Court.

The judges came from a range of backgrounds, and all had experience in criminal matters.. Some were newly arrived on the bench, others had decades of experience. They were nominees of Republican and Democratic governors alike. A few had significant meditation experience, but most had little or none.

### IV. Workshop format and response

The workshop was taught in a conference room close to the Court in a four-hour format. Halpern described the syllabus for the day as follows;

- (a) an introduction to mindfulness
- (b) Science supporting the benefits of mindfulness and meditation
- (c) How mindfulness is relevant to the judicial workplace
- (d) The project's goal of using mindfulness for integrated transformation of the criminal justice system
- (e) Addressing the process of implementing mindfulness in the judicial workplace

Once the judges were assembled the panelists introduced themselves and invited the judges to introduce themselves, including their experience (if any) with meditation. Four judges had no experience, three had some experience and four reported extensive experience.

Halpern then gave a brief overview of the surge in attention to mindfulness and meditation by the scientific community the last 15 years. He noted that fMRI studies by contemplative neuroscientists demonstrate how meditation affects the structure and function of the brain. Greenberg described observing increasing levels of acceptance of meditation and mindfulness in the judicial community over the last 10 years, and his own personal experience with meditation and mindfulness while on the bench and since retirement. Tyler described why and how he incorporated meditation and mindfulness in his practice while a Federal Public Defender and now as a professor and clinical director

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<sup>10</sup> See, e.g. Halpern, Charles. "The Mindful Lawyer: Why Contemporary Lawyers are Practicing Meditation." *J. Legal Educ.* 61 (2011): 641. See also, Ron Greenberg's "Now and Zen." *California Lawyer Magazine* (April 2013).

at Stanford Law.

The judges asked more questions at that point, including: how to stay focused in the midst of a seemingly rote case, how to handle burnout, how can prosecutors and defense attorneys bring mindfulness to their jobs?

After a break, the judges were asked to partner with someone with whom they didn't work closely. They were instructed that they would be engaging in a mindful speech and listening exercise. Each person was invited to reflect on a workplace challenge and to reflect on whether a mindful approach might have changed the outcome. No response to the other person's story was required. If they finished early and had extra time, then they were instructed to talk about what the experience was like or to sit in silence.

The animated, post-exercise discussion raised a number of issues that judges routinely face and to which mindfulness applies. They spoke with great openness and feeling about a number of challenging, recurrent situations—how to respond to and manage angry litigants and attorneys; having to make decisions that follow the letter of the law but may not be in a child or other person's best interest; having a person in the courtroom say personally offensive statements about the judge and they having to proceed with the court session; situations wherein the judge has an angry outburst in the court session; using substances to relieve stress; being inexperienced; how to respond to an upset person without seeming partial, and generally being frustrated with the inherent limits of the job or constraints of the law.

Several judges then talked about the difficulty of mandatory minimum sentences; the three strikes laws; having discretion or not having discretion; being faced with a case where the judge doesn't have the knowledge or experience to feel comfortable ruling; learning to be a judge and not an advocate; and having to build emotional distance from one's work.

Tyler wrapped up the discussion with an emphasis on how important it is for judges to fully engage with litigants mindfully, making a connection with people and giving them a sense that their cases are important and that they are not just cogs in a machine. Following this, Halpern gave a brief description of the Mindfulness Justice Project and Tyler closed the workshop with a loving kindness meditation practice.<sup>11</sup>

According to the evaluations, participants found most helpful the discussion about when and how to integrate mindfulness in the courtroom, and the pairs exercise. They asked for a workshop using mindfulness and bringing together judges, defense counsel, and prosecution. The possibility of establishing a "mindful courtroom" was also discussed. One of the participants wanted more discussion about applying mindfulness to the whole criminal justice system and would like more meditation in future workshops.

The following quotes capture some of the insights and responses of the judges who attended the workshop:

*"Who more than us, needs to be in the moment and present?"*

*"After being on the bench for twelve years, I'm thoroughly convinced being in the moment is one of the most important judicial skills."*

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<sup>11</sup> Loving kindness meditation, also referred to as compassion or *metta* meditation, invites the meditator to deliberately cultivate and send feelings of well-wishing to herself and others.

*“I have found it extremely helpful to meditate everyday and before taking the bench.”*

*“I am very aware and mindful of how I treat people. If you are courteous to others, they return the courtesy. I put myself in the other person’s shoes and treat them as I want to be treated – except lawyers. I need to work on that.”*

*“I have a very chaotic calendar, so I stop myself and take a moment with each person in front of me, because there are so many of them. It’s very effective. I’m trying to teach the same skill to the offenders, so that they can stay in the moment. Everyone has the need for mindfulness.”*

*“Meditation and mindfulness could help lawyers and judges, who as a group have such high levels of stress, anxiety and addiction.”*

*“This could fundamentally make a change. I don’t think you could find a better way.”*

*“Since being in recovery I have been getting feedback from attorneys and litigants that my courtroom is patient and calm. I am able to be in control, without being controlling. I’m here to learn how mindfulness and meditation could reinforce this.”*

*“Two things ring true. I have to be my authentic self. To be the best judge, you have to be yourself. And, the second thing is trauma. In lots of different forms, we are dealing with trauma. This is certainly true in family and criminal court, but even in civil. Many of us have had this epiphany. What’s my path to being my authentic self and dealing with trauma?”*

*“I start each session by thanking the courtroom staff and saying good morning to those in the courtroom. They visibly respond. The lawyers in the courtroom are just as traumatized and stressed as anyone else. Everyone is. I am. I think it’s good that we address that. “*

*“My take away is [that] we set the tone. If something interests me, I listen. If not, I won’t listen. If it’s a garden-variety dope case with all these witnesses, I find myself not listening. But you mention breathing on the bench. If some stupid drug court hearing doesn’t interest me, if I start breathing while on the bench, I think I’d listen.”*

*“I’m much more mindful in family court than I was in criminal. In criminal, I wasn’t focusing on the individual. I focused on the law. In family, I focus on the people. When I see someone is having a hard time, I say, ‘I see you, what’s going on? Take a breath and tell me.’ After just acknowledging them, I see them relax. I sit forward. This is helpful. Learning their story is so important with trauma. You need to help reduce the trauma so you can get agreement and get past anger and addiction.”*



*“Since this assignment [to criminal trials], I have been the sickest I have ever been. I get massages. I eat healthy. I exercise. But maybe mindfulness is something I should try.”*

*“In criminal court, I couldn’t take anything under submission. I might just ask the counsel what the law was. I didn’t have time to process. The load was crushing. In family court, I have a lot more time to look, research and talk to others. Alameda has 80 domestic violence cases. I have 8. How is a person getting their time in Court?”*

*“Each case is a Faberge Egg and I’m a short order cook.”*

*“I can be the first person in authority to treat a guy with PTSD with respect.”*

*“If I’m mindful that I’m running out of time. I just comment on that fact and it makes a difference. So much of the time the litigant is like, ‘Hey, I’m over here.’ A little humanizing, that’s mindfulness, it makes a difference. That’s how I’m processing what I’m hearing.” Is this clear enough?*

## **V. Conclusion**

Given their frequently overfull caseloads, the cognitive challenge of their work, and the high stakes of their decisions, judges should be interested in any means to improve their focus, effectiveness, and fairness on the bench. The July 2015 workshop with Santa Clara County trial judges and other recent workshops involving judges suggest that they recognize this potential, as well as the personal benefits that mindfulness can bring.

A compelling body of anecdotal and scientific evidence demonstrates that mindfulness practice (as well as loving kindness meditation) directly develop capacities judges need to be effective in their work, and to perform their duties in a way that inspires trust among the public. These include enhanced focus, improved ability to listen empathically, reduced impact of implicit biases, and greater capacity to feel and express compassion.

The recent workshops offered to judges in California and Canada offer an excellent template for introducing mindfulness into judicial training. Other judicial training institutions have already expressed interest in offering similar programs. As the field develops, teachers and researchers may want to formalize a “mindfulness for judges” curriculum with dedicated teaching materials. These can then be refined, taught to new instructors, and tested for their effect on measures of judicial performance, such as the trust which trial participants feel in the legal system, the rate of appeals, recidivism rate of defendants who appear before the judge, and compliance with court orders. In addition, it would be useful to introduce these practices in jurisdictions where mindfulness might be less popular, to test the current curriculum and, if needed, refine it in a way that makes it accessible to as many judges as possible.

## **PART 2: PROSECUTORS**

### **I. Introduction**

Prosecutors have rarely participated in mindfulness retreats for lawyers, and they are typically assumed to have a “tough on crime” approach to criminal justice, and a primary concern with long sentences and high conviction rates. It came as something of a surprise, then, that in July 2015 ten of the top prosecutors in the Santa Clara County (Calif.) District Attorney’s Office agreed to participate in a half-day workshop on mindfulness, the technique for cultivating moment-to-moment, non-judgmental awareness that studies say frequently leads to increased compassion and sense of interconnection with others.<sup>12</sup> The District Attorney himself and nine out of his 10 chief assistant DA’s took four hours out of their busy schedule to explore the value of stillness and inner calm.

Most of them seemed tense when they entered the room. Few of them had had any meditation experience prior to this workshop and they seemed skeptical about the program. The workshop facilitators, Ron Tyler and Charlie Halpern, found that the prosecutors relaxed and became more at ease quickly after they had done meditation exercises. Indeed, the prosecutors were receptive not only to mindfulness’ value as a means of stress reduction, but also open to the potential that mindfulness could lead to greater compassion for others, including defendants, and improve their day-to-day work in various ways. At the conclusion of the workshop the group expressed a desire to continue exploring mindfulness practice, and to explore integrating it in practical ways into their work.

At a time when prosecutors have particularly great influence on criminal justice outcomes<sup>13</sup>, and some prosecutors are beginning to acknowledge their role in creating the system’s patterns of racial bias<sup>14</sup>, there is potentially much at stake in the training of prosecutors. Mindfulness’ documented ability to change the attitudes and behaviors of those who practice it over time suggests that mindfulness training could help address the issues currently eroding trust in prosecutors and the criminal justice system.<sup>15</sup>

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<sup>12</sup> See, e.g., Lim, Daniel, Paul Condon, and David DeSteno. "Mindfulness and compassion: an examination of mechanism and scalability." *PLoS one* 10.2 (2015): e0118221 (Replicating an earlier study in which individuals who had participated in an 8-week meditation course were nearly three times more likely to give up their seat to a person on crutches standing in a busy waiting room, as compared to individuals who were on the waiting list for the meditation course).

<sup>13</sup> According to recent statistics, 97% of federal cases and 95% of state cases are resolved by plea bargain, in which the prosecutor tends to control the terms of negotiation, and ultimately recommends a sentence to the judge. In effect, as one district court judge has said, prosecutors have largely taken over the role of the judge. Rakoff, Jed S. “Why Innocent People Plead Guilty.” *The New York Review of Books*. Nov. 20, 2014.

<sup>14</sup> See “Joint Statement of the American Bar Association and the NAACP Legal Defense Fund on Eliminating Bias in the Criminal Justice System.” Available at <http://www.naacpldf.org/press-release/joint-statement-eliminating-bias-criminal-justice-system>

<sup>15</sup> After grand juries in St. Louis County and Staten Island declined to indict police officers involved in the deaths of Michael Brown and Eric Garner, respectively, critics charged that prosecutors had—perhaps once

One of the prosecutors commented that it would be hard to become angry after a period of meditation practice. The subject of anger was discussed at some length. One of the participants stated that he needed his righteous anger to make the most effective presentation of his case to the jury. Others noted that too much anger could compromise the attorney's effectiveness. There was no resolution of the question, but a general recognition that mindfulness had created an environment in which a conversation of this kind might comfortably take place.

While the training program was very preliminary, it was evident that this group of prosecutors, at least, quickly saw the potential of mindfulness to improve their own wellbeing and their effectiveness as supervisors, and potentially their ability to inspire faith in the criminal justice system by modeling fairness and respect in their interactions, particularly with defendants and their families. It suggests the value and significant potential impact of introducing mindfulness more broadly to prosecutors in other jurisdictions.

## **II. July 2015 workshop background**

Mindfulness for prosecutors is essentially a new field and no data currently exists that illustrates the effect of mindfulness training on prosecutors' work. One law school course taught in the past by a former federal prosecutor focused on applying mindfulness to trial advocacy.<sup>16</sup> While mindfulness as a technique that is valuable to lawyers and diverse practices has received considerable acceptance, there is little experience in presenting mindfulness to prosecutors as an enhancement of their effectiveness and of their capacity to retain equanimity in their stressful work.

The Santa Clara County District Attorney's Office, which participated the July 2015 mindfulness workshop, is the largest in Northern California, with a staff of nearly 500 people. It serves a population of more than 1.7 million, including the county seat of San Jose and surrounding Silicon Valley, as well as more rural towns such as Gilroy. The office handles more than 45,000 cases per year.

One of the workshop facilitators, Ron Tyler, had contacts in the DA's office and proposed to them the idea of offering a workshop on mindfulness in connection with the Mindful Justice conference. One of the chief deputies reviewed the matter within the office and indicated that they would like to participate. On the day of the workshop, it turned out that District Attorney Jeff Rosen himself wanted to attend, along with members of his executive management team. Tyler co-taught the workshop with Charlie Halpern, an experienced leader of retreats and workshops for law professionals, and a former law school dean.

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again—manipulated the grand jury process to protect their allies in the police department, and questioned whether prosecutors were capable of even-handed treatment of cases alleging police misconduct.

<sup>16</sup> Professor David Zlotnick, a former federal prosecutor, has taught a special trial advocacy course at Roger Williams College of Law. In a webinar discussing the course, Zlotnick noted, "I wanted to...plant seeds in them that they could become trial lawyers who were kinder and more compassionate to themselves and others, more self-reflective, so they can serve their clients better, and learn how to create less conflict and pain in the trial process, so that they didn't burn out and so that the people they came in contact with as witnesses, as jurors, as opponents did not have to suffer any more than necessary." Webinar video available at <http://www.mindful.org/video-mindfulness-and-the-mock-trial/>

### **III. Workshop content and response**

The four-hour workshop was held in a small conference room at Stanford Law School around a single table. Two sides of the room looked out on a beautiful view of the Stanford campus. This intimate setting was noted with approval in the post-workshop evaluations and helped establish an atmosphere of calm and reflection.

The workshop began informally, with the presenters commenting generally on the advent of mindfulness in the legal profession. There was general agreement among the participants that lawyers in general, and prosecutors in particular, need tools for stress management. They also expressed interest in the general topic of criminal justice reform. They noted that the agenda for the next day's executive meeting included a discussion of a *New Yorker* article documenting the growing criminal reform movement among political conservatives.<sup>17</sup>

#### Workshop overview

Charlie Halpern shifted the discussion to an explanation of mindfulness and its benefits to lawyers. He defined mindfulness as being fully present in the moment with a receptive frame of mind, and noted that meditation was a principle method of cultivating mindfulness. He instructed them to notice when their mind wandered and gently draw it back to the moment, grounded in the body and to be attentive to emotions as well as thoughts. In law, powerful emotions are often thought of as clutter, but they are information to be aware of.

Halpern explained that mindfulness supports the development of a number of valuable tools for the lawyer: stress management skills; self-awareness; enlargement of one's circle of empathy; focus; and mindful speech and listening skills. Legal training often emphasizes confidentiality in the client relationship, but the skill of gaining trust needs more attention. Being fully present to another person is an important part of gaining trust.

He noted that there are many different forms of meditation, but that the workshop would practice three types: qi gong (a moving meditation)<sup>18</sup>; basic insight meditation<sup>19</sup>, and loving kindness meditation<sup>20</sup>.

Halpern then invited attendees to remove their shoes. He led them in qi gong, a practice of moving meditation grounded in Chinese practice, and basic insight meditation. Tyler followed immediately leading them in a loving kindness meditation. The mood in the room shifted noticeably, as people became more relaxed and open. One of the participants noted how relaxed he felt and suggested that it would be difficult for him to get angry after a period of meditation practice

After a period of questions and discussion, the participants were asked to do an exercise in pairs, in which they each had an opportunity to present a challenging experience in their work in which they felt a significant emotional charge. They took

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<sup>17</sup> Keller, Bill. "Prison Revolt." *The New Yorker*, June 29, 2015.

<sup>18</sup> Qi gong is an ancient Chinese practice for working with the breath and the energies of the body.

<sup>19</sup> Basic insight meditation consists of sitting quietly and centering the attention on the flow of the breath.

<sup>20</sup> See FN 11 above.

turns practicing mindful speaking and listening, to see what effect mindful attention had on them as a listener or speaker. The exercise prompted an extended discussion about empathy and compassion in the prosecutor's work, in the way that they interacted with complaining witnesses and with the new attorneys whom they were supervising.

In the final hour, Halpern offered a more detailed overview of the Mindful Justice project and its goals for criminal reform, the particular perspective of mindfulness on criminal justice.

He then led a discussion of how the Santa Clara DA's office might implement some of the principles and practices of Mindful Justice. He noted that Tyler and he were scheduled to do similar workshops with 15 trial judges at the Santa Clara courthouse and with a group of attorneys in the public defender's office. There was then a discussion of how these three offices, if the others shared the same interest in mindfulness that the prosecutors had developed, might interact to try to bring mindfulness into the courtrooms of Santa Clara County. There was discussion of what that might look like and what benefits might flow in terms of civility, empathetic connection, heightened satisfaction by members of the public who were caught up in the criminal process, and just results. There was agreement that this would be an inquiry worth pursuing.

### Responses to mindfulness practice from participants

Over the course of the workshop, the Q&A, and discussion periods, a few principal themes emerged from the prosecutors' comments on mindfulness practice. One was that mindfulness supports the ability to make better decisions by pausing and relaxing the mind, rather than acting on impulse. As one person noted, "there are very few things that you do at work that are worse because you pause(d) first." Given the weight and impact of prosecutorial decisions, this suggests a way to integrate mindfulness in a way that supports less reactivity, and perhaps wiser, more even-handed decision-making. The group discussed beginning plea conferences and other meetings with three minutes of silence in order to establish that sense of calm, laying the ground for wiser, less-impulsive decision-making.

One participant noted that mindfulness naturally lends itself to the job of being a DA, because the essence of the job is to exercise good judgment. "You can't do that without being centered," one commented. "It is a mistake to act out of anger or fear. In making decisions of consequence—judgment calls, plea-bargaining, reactions to judges—you need to make them from a place of mindfulness." The attorney expressed a desire to develop the capacity to exercise mindfulness in those moments.<sup>21</sup>

Some prosecutors noted that they wanted to foster criminal processes that felt just and satisfying to all those involved, including the defendant, the defendant's family, the victim, and the victim's family. One prosecutor spoke with pride of a trial after which the defendant's mother thanked the prosecutor, even though her son was convicted, for treating him with dignity throughout the trial process. This is the kind of conduct that

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<sup>21</sup> Research suggests that regular meditation practice, as well as certain moving mindfulness-inspired practices such as yoga naturally lead to what researchers call "dispositional mindfulness," the ability to act with awareness in a situation without needing to call forth a special effort to do so. Brown, Kirk Warren, and Richard M. Ryan. "The benefits of being present: mindfulness and its role in psychological well-being." *Journal of personality and social psychology* 84.4 (2003): 822.

mindfulness tends to support, and can inspire much-needed faith in the criminal justice system.

Participants were particularly interested in practices for working with victims of crime, who are frequently dealing with trauma, intimidated by the criminal process, and often feel marginalized by it. They wanted to know how to use mindfulness to address the fact that, “the criminal justice system is often very unsatisfying for victims. Victims often think that the process will hold the perpetrator accountable, that they will get an apology, and that they will have closure. It’s very rare that happens. Sometimes the victims leave the case even angrier, even if there is a conviction.” The facilitators noted that sometimes being heard is as important to victims as anything else the attorney can do for them; applying the principles of mindful listening in client interviews and other meetings is a simple step that can lead to greater victim satisfaction. The group acknowledged this as a challenging area, given the significant limitations on victim input into criminal proceedings, to further develop in future trainings.

The prosecutors were also grateful for the insight that they can model full mindful presence for junior attorneys, who tend to mirror the behavior they observe in their supervisors. “If I read a text or email when I’m in their presence, that makes it okay for them to do it with a victim or cop,” one attorney noted. A number of attorneys agreed this was a practical way of implementing mindfulness into their workday with immediate benefits.

#### Exploring the edges of mindfulness for prosecutors

Two topics raised during the workshop triggered a mix of resistance and thoughtful consideration: first, whether being mindful means letting go of righteous anger that is useful with juries and, second, whether it is possible for a prosecutor to feel empathy for the accused without undermining the ability to prosecute him effectively.

The prosecutors noted that righteous anger can be a double-edged sword. While it can help fuel the prosecutor’s determination in a case, it can also be exhausting, particularly when it is evoked for months at a time. One prosecutor noted that cases are often a “marathon, not a sprint,” and that letting one’s emotions run too high throughout the case would merely lead to burnout. Another prosecutor noted that regularly feeling righteous anger over “run of the mill” cases is a “red flag” that emotion has clouded the prosecutor’s view and compromised her effectiveness. Mindfulness could give the prosecutor greater clarity and power to choose when to give in to his feelings of anger, and when they might be inappropriate or counterproductive. This kind of discernment is a classic trait of emotional intelligence that often flows from meditation practice.

One of the presenters asked whether it was possible for prosecutors to learn more about the defendant before making a charge, perhaps leading to greater empathy for the defendant. This question led to thoughtful consideration and significant pushback from the participants. Among other reasons, one noted that this was unrealistic given time constraints on the prosecutors. Another observed that wealthy defendants already have an undue advantage over others, and would be more likely to have the means to arrange such a meeting, further gaining unfair disadvantage. The attorneys also cautioned that pre-arraignment meetings could undermine the possibility of vigorous prosecution.

In the course of the conversation, some of the prosecutors viewed attempts to elicit their empathy for defendants with hostility, noting the frequent barrage of

mitigating evidence from defense counsel, including psychological testimony, family history, and more. Sometimes, defense attorneys try to present this evidence before the defendant is charged, in order to weaken the prosecutor's zeal. As one prosecutor retorted, "often we have the case because [the defendant didn't] have empathy," and committed a vicious crime in the first place. The prosecutor's anger is often increased when the defendant refuses to accept responsibility for his or her actions.

These comments point to some amount of tension between prosecutors and defense attorneys in what constitutes a fair plea bargaining process. Prosecutors seem to resent these attempts at manipulation. Meanwhile, public defenders (whom we spoke with in a separate workshop) seemed to view the prosecutors as impervious, dominant in the plea bargaining process, and closed off to the particular circumstances or humanity of the defendant, which only incites them to further efforts of persuasion.

The prosecutors noted that they participate in a special training in how to say "no," which is an integral part of their work, particularly in plea bargains. It seemed that greater understanding between prosecutors and defense counsel, perhaps mediated by simple mindfulness practices, could make the process less adversarial for both sides and lead to fairer outcomes. One prosecutor suggested that they might start their plea conferences and other meetings with a few minutes of silence to set the tone and encourage less reactivity by all parties.

#### **IV. Conclusion**

Judging by the receptivity and the largely positive response to mindfulness by a group of senior prosecutors in a major metropolitan DA's office<sup>22</sup>, there is reason to believe that prosecutors elsewhere might be receptive to this kind of training. Stress management, emotional balance, and enhanced professional effectiveness seemed to be the most compelling benefits to this group. They also indicated some openness to implementing mindfulness as a way to explore a less adversarial approach to plea bargaining process and a more respectful relationship with defendants and defense counsel. Although not directly addressed at the workshop, mindfulness could also decrease prosecutorial bias.

It is worth acknowledging that Northern California is an area of unusual openness to mindfulness, and that the district attorney was also openly receptive to the mindfulness presentation. However, meditation and yoga are increasingly being embraced in places other than the obvious locations, and it would be a mistake to assume that this is purely a regional or coastal phenomenon.

In presenting mindfulness to this population, it would be useful to include facilitators who are intimately familiar with prosecutorial work, ideally current or former prosecutors. Some workshop feedback noted there was a slight pro-defendant angle to the presenters' perspective, which made the participants feel slightly defensive. In order to inspire greater empathy among prosecutors, it seems important for the teachers to truly model empathy for the prosecutors—which is likely easier for someone who has walked in their shoes.

In all, the workshop suggested that prosecutors clearly saw some immediate value

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<sup>22</sup> See also Judi Cohen's working paper in this series on her mindfulness workshops with the San Francisco DA's office.

to mindfulness practice. Comments included, “I am definitely going to use it”; “I got some tools to make small changes, and the promise of how to make bigger ones”; “Seeds have been sown that you may not see the results of right away – but be assured that you have sown the seeds.” With some refinement of the standard mindfulness curriculum, it should be possible to design mindfulness workshops for prosecutors that address their most common workplace challenges, and lay the groundwork for deeper changes in how prosecutors approach their powerful role in the criminal justice system.



## **PART 3: PUBLIC DEFENDERS**

### **I. Introduction**

In August 2015, Halpern and Tyler delivered the final of the Santa Clara County workshops to the County's Public Defender, Molly O'Neal, and 18 Assistant and Deputy Public Defenders. The workshop was shortened from four hours to two hours to accommodate the attorneys' time constraints.

Most of the participants were enthusiastic about the workshop and receptive to the many benefits it could bring, including improved listening skills, enhanced focus, being more present with clients and others, keeping an open mind and letting go of biases, and meeting the current inflection point in the criminal justice system, with all of its challenges and opportunities.

Some voiced skepticism about the practicality of integrating mindfulness into their fast-paced, adversarial work, but were quite interested to learn simple ways to do so.

### **II. Background on mindfulness for public defenders**

As documented memorably in the acclaimed film *Gideon's Army* (2013), public defenders today have one of the most consistently challenging jobs in the legal profession: massive case loads, limited resources, high stakes, low pay, and clients who are frequently traumatized, under-resourced, or uncooperative. In addition to the regular stresses of the job, in capital defense cases, public defenders may be ethically obligated to repeatedly expose themselves to trauma history, which can take a heavy emotional toll on defense attorneys.<sup>23</sup> All of these conditions put public defenders at high risk for vicarious trauma (also sometimes called "compassion fatigue").<sup>24</sup>

If left unaddressed, this form of burnout endemic to the helping professions can compromise the public defender's ability to provide effective representation and discharge other professional, social and personal responsibilities; it can lead to detachment and emotional withdrawal from family and friends, depersonalization, and disillusionment with the criminal justice system.<sup>25</sup> It is also a leading cause of high turnover among public defenders. A 2011 report by the Wisconsin State Bar documented alarming rates of compassion fatigue and post-traumatic stress disorder (PTSD) amongst public defenders in the state, which is likely indicative of a broader trend in the profession.<sup>26</sup>

Some of the stresses faced by public defenders can be addressed by policy

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<sup>23</sup> ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003) (at Guideline 10.4(B)).

<sup>24</sup> Also commonly referred to as vicarious trauma. "Symptoms of this phenomenon include isolation from others, anxiety, problems with coping skills, a decreased sense of accomplishment, loss of confidence when working with clients, nightmares, and stomach problems." Shevell, L. *Victims of Community Violence in Chicago: The Impact on Professional Responders*, Public Interest Law Reporter, 157 (2011).

<sup>25</sup> Vrkleviski, L.P. and Franklin, J., *Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material*, 14 *Traumatology*, 106, 107 (2008); available online at <http://tmt.sagepub.com/cgi/content/abstract/14/1/106>.

<sup>26</sup> Molvig, Diane. "The Toll of Trauma." Wisconsin Lawyer, December 2011.

measures and changes in the workplace, including limiting caseloads<sup>27</sup> and providing fair salaries.<sup>28</sup> These issues can also be addressed by learning mindfulness. A growing body of scientific evidence indicates that mindfulness practitioners tend to develop greater concentration, experience lower stress, and see improved physical and emotional resilience.<sup>29</sup> By increasing their capacity for compassion, they also experience less distress when faced with the distress of others; they can experience compassion for those in crisis without being overwhelmed by sorrow.<sup>30</sup> While not a panacea for all of the challenges faced by public defenders and their clients, mindfulness practice is increasingly gaining acceptance in the legal profession as a way of cultivating these and other benefits, and has acquired a number of advocates within the criminal defense bar.<sup>31</sup>

To date, there has been little or no systematic mindfulness training directed at public defenders. In addition to the short workshop described in this paper, Judi Cohen has also led an innovative multi-week training program for public defenders in New Mexico, part of which she documents in another working paper in this series.<sup>32</sup>

A number of current and past public defenders have been active members of the growing community of “mindful lawyers,” who attest to the power of their own personal mindfulness practice in sustaining their work as public defenders. In addition, as described further below, some of these attorneys have brought mindfulness practices into clinical teaching settings.

Sujatha Baliga, a restorative justice practitioner who worked for four years as a public defender in New Mexico including two years focused on capital defense cases, is a firm believer in the value of meditation practice, both for maintaining her own sense of balance, and for communicating a sense of equanimity to her clients. She would frequently practice breath awareness meditation with her clients before parole hearings, and believes the resulting sense of calm and focus they exuded during their hearings often contributed to their success in petitioning for parole.<sup>33</sup> Today she has incorporated those same applications of meditation to her work facilitating restorative justice processes.

Another advocate of integrating mindfulness into criminal defense lawyering is Mark Rabil, Associate Professor and Director of the Innocence & Justice Clinic at Wake Forest University School of Law. Rabil has worked as a public defender for more than 20 years and specialized in capital defense, which he admits has been emotionally taxing. He

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<sup>27</sup> In July 2015, the American Civil Liberties Union filed suit against Fresno County, Calif. for constitutional violations stemming from insufficient staffing in the county’s public defender’s office. Public defenders in the county handled an average of 700 cases per year, more than four times the cap of 150 annual cases recommended by the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals. Nationwide, public defenders average about 300 cases per year. Canon, Gabrielle. “Can a Public Defender Really Handle 700 Cases a Year?” *Mother Jones*, July 27, 2015.

<sup>28</sup> A recent study by the Massachusetts Bar Association found that public defenders in the state were paid roughly the same as court custodians, and less than the court switchboard operator. Pfeiffer, Sacha. “Low pay blamed for high turnover among public defenders.” *The Boston Globe*, Jan. 13, 2015.

<sup>29</sup> See Hölzel, Britta K., et al. “How does mindfulness meditation work? Proposing mechanisms of action from a conceptual and neural perspective.” *Perspectives on Psychological Science* 6.6 (2011): 537-559.

<sup>30</sup> See Singer, T. and Klimecki, O. (2014). *Empathy and Compassion*. *Current Biology*. Volume 24, Issue 18, pR875–R878, 22, September 2014.

<sup>31</sup> Gershman, Jacob. “Lawyers go zen, with few objections.” *The Wall Street Journal*, June 18, 2015.

<sup>32</sup> Cohen, Judi. “Observations from Essential Mindfulness for Lawyers Trainings.” *Mindful Justice Working Paper series*, August 2015.

<sup>33</sup> Conversation with author, Aug. 13. Meeting notes on file with the authors.

has practiced meditation for more than seven years, including several long residential retreats. Rabil says that meditation practice “saved my life,” and believes mindfulness is “a tremendous means for preventing secondary trauma” amongst public defenders.<sup>34</sup> He has made presentations on the effects of secondary trauma to capital defense and public defender conferences in North Carolina and Arizona. In his work he discusses contemplative practices, including daily meditation and retreats, as important remedies—in addition to other measures like limiting caseloads, recognizing boundaries, and appropriate compensation.<sup>35</sup>

Ron Tyler, one of the facilitators of the Santa Clara County workshop, is another vocal advocate of using mindfulness in the training and day-to-day work of public defenders. Before becoming Associate Professor and Director of the Criminal Defense Clinic at Stanford Law School, Tyler was a federal public defender for 22 years, and found that mindfulness helped him manage the constant trauma he encountered in his work. He teaches students in the Stanford clinic basic meditation skills as a way of facilitating self-reflection and fostering self-care as they encounter and share the traumatic experiences that their indigent clients often bring to the clinic period.

### **III. August 2015 workshop background**

The Santa Clara County Public Defender office, with 121 attorneys and 30 investigators, serves a county just south of San Francisco with a population of more than 1.7 million. It is organized in five separate geographical locations. The county includes the major metropolis of San Jose, the various towns of Silicon Valley, as well as more rural towns such as Gilroy.

One of the workshop facilitators, Ron Tyler, had contacts in the Public Defender’s office and proposed to them the idea of offering a workshop on mindfulness in partnership with. Charlie Halpern, a former law school professor and dean who has been a pioneer in bringing mindfulness into legal education.

Prior to the workshop, Tyler and Halpern met with the Public Defender, Molly O’Neal, to generally discuss the workshop and Mindful Justice project goals. O’Neal said she had heard from the District Attorney, Jeff Rosen, that the workshop Tyler and Halpern offered to his office was “very powerful” for the district attorneys. Rosen told O’Neal that he was using moments of silence to prepare for meetings, such as a meeting with the new interns.

### **IV. Workshop format and response**

The workshop was conducted during a regularly scheduled office CLE meeting. It was pared down from a 4-hour format to a 2-hour format to accommodate the schedule of the lawyers. Nineteen lawyers, one investigator and one legal intern attended.

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<sup>34</sup> Email correspondence, Aug. 19-28, 2015. On file with the authors.

<sup>35</sup> Rabil has been part of a team currently producing a documentary about the effects of trauma on attorneys, investigators and other professionals that work in capital defense. They started filming this summer at the Arizona Public Defender Conference where they interviewed defense attorneys and mitigation investigators about the effects of the work on their lives and possible remedies. According to Rabil there is in progress a national study/survey of the effects of work on capital defense teams similar to a study done on Wisconsin public defenders.

The workshop was held in a crowded classroom set up with rows of tables and chairs. The workshop started informally as people arrived. Tyler discussed his background as a public defender, his work at Stanford and the history of his mindfulness practice. Halpern introduced himself and then asked the group to take off their shoes in preparation for qi gong practice.<sup>36</sup> Participants were asked to help move the tables and chairs to the side walls and gather in a circle in the middle of the room. After a 10-minute qi gong session, some of the participants joked around a little, perhaps to ease any tension, before settling so Tyler could lead a 10-minute sitting meditation.

After the qi gong and meditation, Tyler and Halpern asked for questions or comments. There were assorted questions about what to do when you feel sleepy or are distracted by self-judgments or physical discomfort and whether guided meditation podcasts were helpful. One participant commented, “I was amazed at how quickly after I would refocus my brain would move on to another thought. This was a unique opportunity to see how quickly my mind goes from one thought to another.” Halpern used this as an opportunity to explain how meditation demonstrates how many thoughts pass through our minds at any given time and how difficult it is to maintain focus. He also used the opportunity to note that mindfulness is not about shutting off the brain but about cultivating the capacity for careful observation of mental processes so as to be better able to develop the capacity for greater balance and equanimity and to make the practice of law more sustainable and effective.

One participant asked, “The last thing I want to do in a courtroom is relax. I want to be on and ready to chop off someone’s head right then, if I need to. How do I reconcile the two?” Tyler answered by saying, “Mindfulness doesn’t mean to be “*at ease* or absent.” It means being fully present, not consumed by fears and doubt. Being present means you will be more effective. It also allows for greater empathy and connection. But still you’re “*on your game*.”

The participants were then asked to do a pairs exercise in which they practiced mindful speaking and listening, to see what effect mindful attention had on them as a listener or speaker. Each participant had an opportunity to discuss an instance in their trial work in which they had to deal with an emotionally charged issue that generated stress and anxiety, and how mindfulness might have assisted them in that situation. The exercise prompted an extended discussion about various topics including: listening skills; dealing with an obstructive adversary; and how to maintain an open mind and let go of biases. Tyler closed the discussion and encouraged the participants to think about the ways mindfulness opens up a menu of different choices in stressful situations.

Halpern described the Mindful Justice project and the possibility of applying mindfulness to transform the criminal justice system. He opened the discussion by proposing an experiment in Santa Clara County in which some courtrooms would be managed—with the approval of the judge, the prosecutor, and the public defender—in a way that incorporated mindfulness practices and principles. The immediate response was to question what the precise procedures would be for doing so. The participants discussed

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<sup>36</sup> In his evaluation and during the wrap up discussions, one participant, who had no experience with meditation, suggested letting people know ahead of time that there would be “interactive exercises, yoga and meditation.”

what would be done differently, what parameters would be measured and whether mindfulness can be applied with a high-volume caseload in an adversarial setting.

Overall, the workshop participants expressed, during the workshop and in their written evaluations, general receptivity to applying mindfulness in their everyday lives and work. Some wanted more specific “practical suggestions to apply mindfulness techniques in specific work-related situations,” particularly in the courtroom and with clients. A few openly stated that mindfulness could be a “valuable tool” to make positive changes in their work and the work of others in the criminal justice system. They wanted specifics, demonstrations and discussions about “how mindfulness can improve our practice and outcomes for clients.” While some comments suggested that some attorneys already felt overwhelmed with tasks and obligations, and saw mindfulness as potentially another item on their to-do list, the final comments of the participants suggested an interest in continued exploration of mindfulness in connection with their work.

### Participant quotes

“After sharing my story of a stressful experience, I realized if I had mindful tools available then it would have been helpful. Going forward I’m particularly interested to see if mindfulness could make a change for the better.”

“We often don’t have an open mind by the time we meet a client. We have read the file – arrest report, witness accounts, etc. Being mindful means listening actively instead of with one ear to hear what we think happened.”

“This was a positive experience. I’m always busy and stressed. I have to think about the bigger picture.”

“Being centered will help us be more successful.”

“This gave me another tool in the toolbox to step back and stay present - be aware when serving clients.”

“I’m so happy you’re here. I never thought mindfulness would come to the law profession.”

“This was a very positive experience - very relevant. Even though it’s difficult to be mindful with a high volume of cases, maybe it’s the only thing that can help.”

“I’ve always found it helpful to reset outside the courtroom and office. It’s comforting to know I could use these tools inside the courtroom, too.”

“I’m grateful to have had this opportunity to learn something new, be open minded, share and listen.”

“I had a great time today. I’m excited to learn more and that Ron, coming from our background, shared ideas to make our job easier. We need it.”

“Anything that causes us to be more able to listen is important to our job.”

## V. Conclusion

Mindfulness practice, as evidenced by the growing number of criminal defense attorneys who have embraced it, and the positive response to the July 2015 workshop, seems to hold a number of valuable applications to the work of public defenders. Developing a regular meditation practice can help attorneys mitigate the physical and emotional toll of their work. Introducing short moments of mindfulness throughout the day—such as sitting quietly before a contentious meeting, or pausing for a few breaths before heading into the courtroom—can carry feelings of calm and focus into the work day. Decisions made in a focused and centered manner are more likely to effectively serve clients and those made under pressure and with anxiety.

Despite their high-volume caseload, the public defender's practice of mindful listening is a potentially powerful way to help clients feel genuinely heard despite frustrating time limitations. Mindful listening can also improve interpersonal dynamics with co-workers, witnesses, prosecutors and judges, to the client's benefit. Mindfulness skills can be employed to refocus the public defender's mind when it drifts from the client's recitation of a traumatic incident to a list of potential legal claims, when they are emotionally triggered by an angry, attacking client/opposing counsel, or when the public defender has an unacknowledged bias against the person they are interacting with in the moment.

Recent neuroscience research has also shown that “meditation-based training enables practitioners to move quickly from feeling the distress of others to acting with compassion to alleviate it.”<sup>37</sup> Put simply, contemplative training appears to teach the mind to move directly from an observation of suffering to benevolent action, without becoming paralyzed by others' pain.”<sup>38</sup> The value of this shift could help public defenders, who are constantly confronted with the suffering of others, to avoid becoming paralyzed by this emotional onslaught, maintain their own balance, and continue to work effectively on their clients' behalf.

The July 2015 workshop conducted at the Santa Clara County Public Defender's office reaffirmed the value of mindfulness for criminal defense attorneys, and generated new ideas for how it might be better integrated into their work. It showed receptivity among the participants, a desire to go further with an inquiry into mindfulness in the context of criminal defense practice.

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<sup>37</sup> Desteno, D., “The Kindness Cure.” *The Atlantic*, July 21, 2015.

<sup>38</sup> *Id.*