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**An Introduction to the Brahmavihāras: For Lawyers, Law Students, & Judicial Officers**

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GMIND 7500: Thesis/Capstone

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September 2021

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September 2021

### **Acknowledgements/Dedication**

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- To my parents, Wayne and Karen Ferrill, the first healer and teacher, respectively, who encouraged my curiosity and showed me how to love others.
- And to my husband, Mark, and our son, Pat, thank you, and I love you.

### **Abstract**

This paper outlines what I have learned about the lawyer well-being movement, the overwhelming suffering that is affecting lawyers, law students, and judicial officers in the United States, how the suffering of each group is similar and different, why this suffering should concern all of us, a review of mindfulness practices in the legal profession, the brahmavihāras and some studies about kindness and compassion training programs, and how these lessons informed the seven module asynchronous online training program created to introduce the brahmavihāras to lawyers, law students, and judicial officers. The training program is freely accessible at <http://www.thought-kitchen.com/>.

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Most people likely have not spent too much time thinking about the suffering of members of the legal profession. That is understandable because some common descriptions of lawyers are: argumentative, confrontational, inflexible, killers of fun, among other more colorful words. And for people who have faced going into a courtroom to have a matter that is important to them litigated, they may have found judicial officers to be cold, authoritarian, unsympathetic, or terrible listeners.

The fact is that the law is a system that applies to all of us, but the lawyers and judicial officers are the ones who have a special duty to translate the language of the law into understandable terms for those without special training and to ensure that it is applied uniformly to all of us. I remember walking into the first day of law student orientation, held in the courtroom of the then newly opened McKinney School of Law at Indiana University, Indianapolis. On one wall of the courtroom is the quote from Dr. Martin Luther King, Jr. that says, “Injustice anywhere is a threat to justice everywhere.” But what happens when the people who are charged with ensuring there is justice everywhere are suffering?

That is the underlying question that has grounded the exploration that follows in this paper as well as the training program that constitutes the creative portion of this thesis project. In the following pages, I will share with you what I have learned about the lawyer well-being movement, the overwhelming suffering that is affecting lawyers, law students, and judicial officers in the United States, how the suffering of each group is similar and different, why this suffering should concern all of us, a review of mindfulness practices in the legal profession, the brahmavihāras and some studies about kindness and compassion training programs, and how I alchemized all of these lessons to create a training program to support lawyers, law students, and judicial officers in easing their suffering.

## The Lawyer Well-Being Movement

The results of several studies document the alarming scope of suffering in the legal profession—struggles maintaining mental health, battles with addiction, burnout, and disengagement—and also offer a glimmer of hope by suggesting that mindfulness-based practices can help ease this suffering. The studies, summarized in the August 2017 report of the American Bar Association’s National Task Force on Lawyer Well-Being (“Task Force”) titled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (“Task Force Report”), is the most comprehensive exploration of American lawyer well-being ever undertaken (National Task Force on Lawyer Well-Being [Task Force], 2017). The findings of problem drinking, depression, anxiety, incidences of death by suicide, and work addiction (to name a few) are frankly alarming and shocking (Task Force, 2017). More hopefully, the Task Force made numerous recommendations for changes to address its findings, including a recommendation to engage in mindfulness meditation practices (Task Force, 2017).

It matters whether mindfulness meditation practices can offer legal professionals meaningful relief from their suffering because legal professionals are woven into the fabric of this country’s political and legal power. The stakes are no less than the ability of legal advocates to act as healthy, competent, impartial decision makers. Their successful efforts to act thusly can help relieve the suffering of everyone from the private party seeking a legal remedy to the body politic in its quest for a more just society. Their failure can add to the suffering of all concerned.

The Task Force was founded in 2016 by the American Bar Association (“ABA”) Commission on Lawyer Assistance Programs (“CoLAP”), the National Organization of Bar Counsel (“NOBC”), and the Association of Professional Responsibility Lawyers (“APRL”). Once formed, other entities joined in the efforts of the Task Force, including the ABA Standing



Committee on Professionalism, the ABA Center for Professional Responsibility, the ABA Young Lawyers Division, the ABA Law Practice Division Attorney Wellbeing Committee, the National Conference of Chief Justices, and the National Conference of Bar Examiners (Task Force, 2017).

The formation of the Task Force arose from concerns about the findings regarding lawyer and law student well-being that had recently been published, known as the Survey of Law Student Well-Being (Organ et al., 2016) and the ABA/Hazelden Betty Ford Study (Krill et al., 2016). In 2016, Krill et al. published findings from their study of 12,825 licensed, employed attorneys from 19 U.S. states. This study was important because at the time, little was known about the behavioral health of those practicing in the legal profession. There was a widespread belief that lawyers experience substance use disorders and other mental health concerns at a high rate, but few studies had been undertaken to validate those beliefs (Krill et al., 2016). Krill et al. found substantial rates of behavioral health concerns, including 20.6% screening positive for hazardous, harmful, and potentially alcohol-dependent drinking, 28% experiencing symptoms of depression, 19% experiencing symptoms of anxiety, and 23% experiencing symptoms of stress (Krill et al., 2016). In the conclusion section of the study, the authors wrote:

The data reported here contribute to the fund of knowledge related to behavioral health concerns among practicing attorneys and serve to inform investments in lawyer assistance programs and an increase in the availability of attorney-specific treatment. Greater education aimed at prevention is also indicated, along with public awareness campaigns within the profession designed to overcome the pervasive stigma surrounding substance use disorders and mental health concerns. (Krill et al., 2016, p. 52)

My initial effort to address the suffering identified by the Task Force was through my work as a volunteer for the Indiana Judges and Lawyers Assistance Program (“JLAP”). It was at a JLAP retreat in April 2018 that I was first introduced to the practice of mindfulness, and I immediately recognized its potential to address legal professionals’ suffering.

That introduction to mindfulness has led to the development of this paper, which summarizes (1) the articles and studies published regarding the well-being of lawyers, law students, and judicial officers<sup>1</sup>; (2) the literature written about lawyers, law students, and judicial officers engaging with mindfulness-based practices; (3) an introduction to the brahmavihāras, the Buddha’s heart teachings; (4) a survey of the studies about outcomes associated with mindfulness-based training programs that strengthen kindness and compassion, two of the four brahmavihāras; and (5) the case for the accompanying training program, *An Introduction to the Brahmavihāras: For Lawyers, Law Students, & Judicial Officers*, designed to increase their well-being.

### **Suffering in the Legal Profession is Everywhere**

The task of addressing lawyer well-being is significant, and the Task Force summary of the situation is sobering. In the cover letter of the Task Force Report (2017), Co-Chairs Bree Buchanan and James C. Coyle wrote:

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers.

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<sup>1</sup> The term “judicial officer” or “judicial officers” is used throughout this text to refer to any judge, justice, hearing officer, magistrate, or anyone else acting as an arbiter of law, rule, or policy in a judicial proceeding. The intention in using this term is to be as inclusive as possible in recognition of many different titles across jurisdictions.

We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer. (p. 1)

This call to action began by defining “lawyer well-being” as “...a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others.... This definition highlights that complete health is not defined solely by the absence of illness; it includes a positive state of wellness” (Task Force, 2017, pp. 9-10).

Notably, the Task Force omitted any mention about the specific challenges facing lawyers, law students, and judicial officers who are members of historically excluded groups, such as people of color, women, people living with disabilities, people who identify as LGBTQIA+, and others. That omission has recently caught the attention of the legal community, and studies are now being published that have begun to discuss the experiences of historically excluded groups (Liebenberg & Scharf, 2019; Peery et al., 2020; Sterling & Chanow, 2021). As a white woman, I acknowledge that I did not begin to notice this until the past few months as I began to see reports about the experiences of lawyers who are women of color. Although outside the scope of this paper and project, this is an area of research that is rich and deserving of inclusion in future work in the lawyer, law student, and judicial officer well-being movement. My focus here however is broadly concentrated on the general state of lawyer well-being.

My research indicates there is a nascent and positive view of the potential for mindfulness-based practices to address the crisis in lawyer well-being. Indeed, the remainder of the 73-page Task Force Report recommendations include mindfulness-based practices for all stakeholders—judicial officers, regulators, legal employers, law schools, bar associations, lawyers professional liability carriers, and lawyer assistance programs (Task Force, 2017). In Appendix B, which includes 13 examples of educational topics for lawyer well-being, Recommendation 8.4 suggests the following:

#### 8.4 Mindfulness Meditation

Mindfulness meditation is a practice that can enhance cognitive reframing (and thus resilience) by aiding our ability to monitor our thoughts and avoid becoming emotionally overwhelmed. A rapidly growing body of research on meditation has shown its potential for health in addressing a variety of psychological and psychosomatic disorders, especially those in which stress plays a causal role. One type of meditative practice is mindfulness—a technique that cultivates the skill of being present by focusing attention on your breath and detaching from your thoughts or feelings. Research has found that mindfulness can reduce rumination, stress, depression, and anxiety. It also can enhance a host of competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced burnout, and ethical and rational decision-making. Multiple articles have advocated for mindfulness as an important practice for lawyers and law students. Evidence also suggests that mindfulness can enhance the sense of work-life balance by reducing workers' preoccupation with work. (Task Force, 2017, pp. 52-53)

At the very least, the Task Force report validated my intuition that mindfulness-based practices could have significant relevance to achieving greater lawyer well-being.

### **The Suffering of Lawyers, Law Students, & Judicial Officers is Similar and Different**

After enrolling in Lesley's program, I quickly realized how certain fundamental practices and teachings could be made accessible and relevant to the daily lived experience of legal professionals, practices such as formal sitting mindfulness meditation, walking meditation, and teachings such as the Second Arrow Sutta, mettā, and impermanence. The relevance of these teachings and practices is underscored by urgency: the fact is that lawyer well-being starts eroding the minute a person enrolls in law school and continues throughout their legal career. In 2016, Organ et al. published their report regarding law student well-being, which was comprised of a survey of over 3,300 law students at 15 American law schools. In it, the researchers found that 17% of students reported experiencing some level of depression, 14% experienced severe anxiety, 23% reported experiencing mild or moderate anxiety, and 6% reported serious suicidal thoughts in the past year (Organ et al., 2016). In responding to questions about alcohol use, 43% reported binge drinking at least once in the prior two weeks, and 22% reported binge-drinking two or more times during that same period (Organ et al., 2016). One-quarter were categorized as being at risk for alcoholism, so further screening was recommended (Organ et al., 2016).

In December 2020, the results of the first large-scale national survey of stress and resiliency in the United States judiciary was published (Swenson et al., 2020). This study was undertaken because no research comparable to the lawyer and law student studies had been reported regarding judicial officers, so one of the Task Force recommendations was to conduct judicial well-being surveys "...to determine the state of well-being and the prevalence of issues

directly related to judicial fitness such as burnout, compassion fatigue, mental health, substance use disorders and help-seeking behaviors” (Task Force, 2017, p. 23).

“Unlike the Lawyer Study and the Law Student Study published in 2016 that examined stress generally, the National Judicial Stress and Resiliency Survey items were designed to highlight the specific experiences of judges and the judicial setting” (Swenson et al., 2020, p. 3). There are an estimated 18,000 judicial officers across the United States, and the study was based on 1,034 judicial officers who completed and returned the survey, who were 56.5% men and 42.8% women; 84.3% Caucasian/White, 5% Hispanic or African American; and less than 2% Native American, Asian, Pacific Islander/Hawaiian, and Multicultural. Most were state court judicial officers (78.6%), followed by local (10.1%), administrative (8%), and federal, tribal, and military courts (about 2% or less) (Swenson et al., 2020).

The judicial officers reported a variety of stressors, including most frequently: the importance/impact of their decisions (79.7%), their heavy docket of cases (73.2%), presiding over cases litigated by unprepared attorneys (67.6%), self-represented litigants (62.5%), and dealing repeatedly with the same parties without addressing the underlying issues of their conflict (58.1%) (Swenson et al., 2020). In response to these stressors, judicial officers reported a variety of effects of this stress, including the top three: fatigue and low energy after hearing several cases in a row (38.8%), a variety of sleep disturbances (36%), and interference with attention and concentration (32.3%) (Swenson et al., 2020).

Two trends in the responses regarding the effects of stress caused the authors concern about depression and anxiety among the study participants. With regard to depression, these responses included: not having the initiative to do things (22.9%), preoccupation with negative thoughts (20%), feeling that work is no longer meaningful (17.8%), looking forward to the day’s

work to end (16.7%), depressed mood (15.3%), feeling that there is nothing to look forward to (12.6%), feeling increasingly numb to pleas of urgency (11.2%), and caring little about the outcome of most trials (6.9%) (Swenson et al., 2020). In response to these findings, the authors stated, “Each of these criteria is concerning. The finding that over one in five judges meet at least one criteria for depressive disorder deserves our full attention” (Swenson, et al., 2020, p. 12). In addition, just over 2% of the judicial officers reported experiencing thoughts of self-harm or suicide, which means that 22 of those responding experienced thoughts of self-harm in the preceding twelve months (Swenson, et al., 2020).

With regard to anxiety, fewer participants experienced anxiety than depression, but the numbers were still significant: increased health concerns, such as high blood pressure (27.6%), feelings of apprehension or anxiety (23%), experiencing intrusive thoughts of traumatic images of people or evidence (19%), difficulty asking a respected colleague for a critique of work (13.3%), difficulty breathing (7.4%), and worrying about panicking or losing control (4.6%) (Swenson, et al., 2020). The authors found the percentage of participants experiencing feelings of apprehension or anxiety and those experiencing intrusive thoughts the most concerning (Swenson, et al., 2020).

These are not merely statistics to me. I not only have witnessed the suffering of legal professionals, I have experienced the same suffering too. Accordingly, the Task Force study has proved invaluable in guiding me as I canvassed the research mentioned in it, as well as studied articles about lawyers and meditation. One of the most intriguing and encouraging findings of the study arose from the section about stress management and resiliency activities, and it signaled that mindfulness practices have tremendous potential to gain a widespread following within the legal community.

In the study, questions were asked about activities that the judicial officer currently practiced and those that the judicial officer had an interest in practicing (Swenson, et al., 2020). Mindfulness was a current activity (meaning it was currently practiced “a few times a month” to “nearly daily”) of 35.9% of participants, but 81.4% of participants were interested in it (Swenson, et al., 2020). This 45.5% gap suggests that training and support of mindfulness practices is something that might feel supportive to judicial officers. Mindfulness was second only to asking for peer support, which reported a 46.2% gap between being a current activity and something participants were interested in developing (Swenson, et al., 2020). Indeed, I am not alone in my belief in the effectiveness of mindfulness, because lawyers have already discovered mindfulness meditation and in fact have been writing about it in law reviews for two decades. Mindfulness is not, however, a part of mainstream discussion within the Indiana legal community.

### **Why Everyone Should Care About Lawyer, Law Student, and Judicial Officer Well-Being**

In January 2020, I undertook my first week-long silent retreat at the Insight Meditation Society in Barre, Massachusetts, which was designed to support professionals who engage in mindfulness-based practices. The retreat was grounded in Mindfulness-Based Stress Reduction (“MBSR”), an often-cited modality in studies about the efficacy of mindfulness interventions. During that retreat I gained a deeper appreciation for the Buddha’s role as both healer and teacher and saw how the twin missions of healing and teaching resonated within the legal profession.

While it may strike some as counterintuitive to think of legal professionals as healers and teachers, the notion is not unprecedented. Robert Benham, former Chief Justice of the Supreme Court of Georgia, has said that “the first professions in society were the clergy, who healed the



spirit, the doctors, who healed the body, and the lawyers, who healed the community” (Bibelhausen, 2021). There are practitioners who have been reimagining the practice of law as a healing profession for many years now, writing articles, books, and establishing organizations, such as the Project for Integrating Spirituality, Law and Politics and the Mindfulness in Law Society (Silver, 2007, 2017). Lawyers are also called upon to teach others to teach about the state of the law as well as how the legal system works, which often falls under the term “client counseling.” Judicial officers also fill an educator role, such as when they educate litigants about the legal process (Kovach, 1998).

In offices across the United States each week, people who seek advice and counsel about a legal issue—such as a family law matter, incorporating a small business, a criminal matter, negotiating a contract, an immigration matter, or enforcing the terms of a residential lease—depend on lawyers to help them navigate some of the most important events of their lives. Sometimes these matters are presented and argued before a judicial officer who is asked to render decisions that may have lifelong repercussions for the people involved. There are also classrooms of law students who are training to become the next generation of lawyers and judicial officers. As the students learn, there are ethical rules established by each jurisdiction, which are meant to guide the behavior of lawyers and judicial officers as they carry out their duties. These rules are important to ensure the public’s trust in the judicial system as well as to assure anyone who engages a lawyer to provide services that the lawyer meets a minimal level of competency and professionalism. If a lawyer’s well-being suffers, then their ability to respond to legal problems in an ethically appropriate manner will suffer, and the consequences ultimately will be felt by the ultimate consumer of legal services, whether it is the private client or the public trust.

Therefore, the rules by which lawyers play are consequential. Each jurisdiction adopts its own rules for lawyer conduct which are like the American Bar Association's Model Rules of Professional Conduct. Three of the Model Rules that are integral to any lawyer's representation of a client are Model Rule 1.1 (Competence), Model Rule 1.3 (Diligence), and Model Rule 1.4 (Communication):

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. (American Bar Association, 2020, p. 29)

Rule 1.3: Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client. (American Bar Association, 2020, p. 34)

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. (American Bar Association, 2020, p. 36)

Like the Rules of Professional Conduct, each jurisdiction adopts its own rules governing judicial officer conduct which are similar to the American Bar Association's Model Code of Judicial Conduct. The central principle of judicial officer conduct is Judicial Canon 2:

Judicial Canon 2:

A judge shall perform the duties of judicial office impartially, competently, and diligently. (American Bar Association, 2020, p. 364)

These rules remind us that lawyers and judicial officers have voluntarily promised to uphold certain duties as integral members of the justice system, which affects every single person who lives in the United States. When a lawyer or judicial officer's well-being is impaired, they may be unable to fully perform the duties of competence, diligence, communication, and impartiality. This, in turn, affects the parties involved in the matter, which then will have a ripple effect into the entire justice system. Therefore, the suffering of lawyers and judicial officers should concern all of us.

The norms of professional conduct can be integrated with a supportive mindfulness practice through an effective on-line teaching mechanism. To that end, I have designed an asynchronous online course to introduce the brahmavihāras, the Buddha's heart teachings, to

lawyers, law students, and judicial officers as the creative component of this thesis project. The framework for this project must be understood in the context of the status quo of mindfulness practice in the legal community for, while not new, it is also not systematic or methodically integrated into mainstream legal practice. Instead, the literature reveals effective, but disparate institutional strategies to delivering mindfulness meditation practices to the legal community.

### **Lawyers, Law Students, Judicial Officers, and Mindfulness-Based Practices**

The practice of mindfulness meditation is not new to the legal community. In one of the earliest law review articles about the potential of mindfulness meditation in the legal profession, Professor Leonard Riskin wrote:

In 1989, the Center for Mindfulness in Medicine, Health Care and Society offered a Mindfulness-Based Stress Reduction (MBSR) program to trial court judges. And in the mid-1990s mediators for the U.S. Court of Appeals for the Ninth Circuit attended a day-long session on mindfulness at Spirit Rock Meditation Center. More recently, in fall of 1998 and 1999, the 400-lawyer Boston office of Hale and Dorr offered its lawyers mindfulness meditation training using the MBSR model. (Riskin, 2002, p. 33)

The article continues to outline the various ways that mindfulness meditation spread throughout the legal community, including starting in 1998, various five-day contemplative retreats organized by the Center for Contemplative Mind in Society for law professors, lawyers, and law students from Yale and Columbia; conferences and continuing legal education programs by the American Bar Association, including a preconference mindfulness meditation workshop by the ABA Section of Dispute Resolution at the 2002 Annual Conference; various bar association programs in Boston, Maryland, and Northern California in 2000 and 2001; a

mindfulness meditation and other contemplative practices series offered by City University of New York School of Law in 2001; and a group of lawyers who meditated together weekly in Kansas City (Riskin, 2002). “And since 1999, I have taught or co-taught workshops on mindfulness and negotiation, mediation or lawyering events sponsored by dispute resolution organizations in Wisconsin, Michigan, Iowa, Austria, and Denmark; in a course in the graduate certificate program in Dispute Resolution at Southern Methodist University; and in CLE programs in Missouri, California, and Alabama” (Riskin, 2002, pp. 37-38).

The first law school course to include mindfulness meditation in the United States was offered in 1997 by Professor Cheryl Conner, Director of the Clinical Internship Program at Suffolk Law School (Riskin, 2002). An elective called *The Reflective Practitioner*, it was meant to support the work of students enrolled in clinical placements and included an exercise to support developing compassion (Riskin, 2002). In spring 2000, Professor Jacqueline St. Joan, Director of Clinical Programs at the Denver College of Law, offered a class to students in field placements, with the hope that she would “introduce students to the fundamentals of contemplative practice as threads to weave together personal and professional lives” (Riskin, 2002, p. 40).

Included in a treatise about practicing law as a healing profession, Leonard Riskin offered an expansive “primer on paying attention” that included many resources to support mindfulness meditation practice as well as discussing the concept of loving-kindness practice:

Mindfulness practices *tend* to promote positive mind states, but not consistently and sometimes only over a period of time. However, other meditative practices are specifically designed to deliberately and directly cultivate such positive states of mind.

The most fundamental of such meditations are those that develop loving-kindness toward self and other. (Riskin, 2007, pp. 453-454)

This essay is situated among a collection of essays from authors who imagine a world in which law can be practiced as a collaborative effort, rather than a confrontational endeavor. It invites the reader to consider the practice of loving-kindness meditation as a support in lawyering, especially in matters that are especially challenging. “You might do a loving-kindness meditation, in which you include, in addition to yourself, the parties and lawyers on both sides, and other affected persons. This can help you keep focused on the task at hand and the interests of others...” (Riskin, 2007, p. 465). This is an interesting transition in Riskin’s argument for lawyers to take up mindfulness meditation, which earlier focused on supporting concentration and reducing stress.

Rhonda Magee is a professor of law at the University of San Francisco as well as a mindfulness meditation teacher who is a Fellow of the Mind and Life Institute. She has written extensively about how she incorporates her mindfulness meditation practice into her law school teaching as well as the practices she has developed to incorporate her lived experiences as an African-American woman (Magee, 2010, 2016a, 2016b, 2016c, 2016d, 2016e, 2019). This practice, which she calls ColorInsight, incorporates lovingkindness and compassion practices to support the difficult work of understanding and working with issues that arise around race (Magee, 2016b, 2019).

Scott Rogers has written in both academic and bar association journals about introducing law students to the practice of mindfulness meditation and is the Founder and Director of the University of Miami’s Mindfulness in Law Program, where he has been teaching mindfulness-based courses since 2008 (Rogers, 2012, 2016). In addition, he currently serves as the Co-

President of the Mindfulness in Law Society. Richard Reuben, a professor of law at the University of Missouri, is an expert in conflict resolution, as well as a meditator who founded the Mindfulness in Law Society. He has written about how his mindfulness meditation practice made him a better professor by supporting his present moment awareness, which allowed him to respond to his students rather than get tangled up in what he was going to say next (Reuben, 2012). Charles Halpern was meditating and exploring how to cultivate inner wisdom and foster mindful social activism in the 1980s, both as he practiced law and taught at various law schools (Halpern, 2012). Finally, The National Judicial College offers a four-day Mindfulness for Judges training to support judicial officers in developing and using mindfulness meditation practices to support their work (The National Judicial College, n.d.).

### **Exploring the Brahmavihāras**

Armed with the understanding that mindfulness had received widespread but disconnected recognition in the academic literature, I resolved to tie the loose strands together in an organized and methodical fashion that would provide broad-based user support. My approach was initially twofold: (1) incorporating a mindfulness-based communication strategy and (2) grounding that strategy in the brahmavihāras. Relying on the work of Oren Jay Sofer and Gregory Kramer, I incorporated mindful nonviolent communication and a practice called Insight Dialogue, which is an interpersonal mindfulness practice between two people that involves discussing a question. Insight Dialogue invites participants to Trust Emergence, a foreign and uncomfortable concept for many legal professionals, who are used to controlling the conversation by writing and rehearsing talking points. Nevertheless, two people may achieve more effective communication and understanding by non-judgmentally paying attention to each other, listening, pausing, noticing what is arising in that moment, and then speaking it into the

conversation. By enhancing the level of awareness brought to a discourse, insights emerge that otherwise would have been silenced by clinging to a script of what each speaker and listener was “supposed” to say or do.

The brahmavihāras, sometimes called the “divine abodes” or “sublime attitudes,” are the Buddha’s heart teachings (Bhikkhu, 2010). There are four of them: kindness (*mettā*), compassion (*karunā*), empathetic joy (*muditā*), and equanimity (*upekkhā*), and each works in concert with the others (Feldman, 2017). “The interwoven nature of the brahmavihāras is beautifully described by the teacher Longchenpa, a prominent teacher in the Nyingma school of Tibetan Buddhism in the fourteenth century.

Out of the soil of friendliness grows the beautiful bloom of compassion,

Watered by the tears of joy,

Sheltered beneath the cool shade of the tree of equanimity” (Feldman, 2017, p. 2).

The brahmavihāras each have their own traits, while also working together to keep each in balance, a kind of Middle Way. Kindness is the bedrock of compassion and acts to protect compassion from edging toward either despair or partiality. Kindness ensures equanimity does not tip toward indifference. Compassion protects kindness from becoming sentimental and protects joy from forgetfulness. Compassion works to turn kindness into healing action. Joy tempers the raw edges of sorrow and pain and guards the compassionate heart from being overwhelmed with sorrow. Equanimity brings patience and steadiness to kindness and compassion and balances joy from becoming exuberant. Joy softens equanimity. And “[e]quanimity allows us to act without becoming preoccupied with the results and outcomes of our actions” (Feldman, 2017, p. 3).



The brahmavihāras add emotional depth to mindfulness practice. Mindfulness practices are not just about the mind, e.g., improving concentration, or making my lawyer brain “sharper” or less stressed. Mindfulness practices are also about feeling and understanding with the heart and connecting the heart with the mind. To be in balance, to find the Middle Way, I need both my heart and my mind—to operate in my heart-mind. And maybe lawyers, law students, and judicial officers might also find support in the brahmavihāras? Professor Rhonda Magee, as well as other scholars, like Leonard Riskin, write approvingly about the relevance and effectiveness of lovingkindness and compassion.

In the spring of 2020, Christina Feldman and Chris Cullen offered an online asynchronous program on Tricycle entitled *Universal Empathy: A Fresh Look at the Qualities of the Heart* (Feldman & Cullen, 2020). I knew Chris because he was the leading teacher at the retreat I attended at IMS, and I had learned of Christine’s teachings earlier in the Lesley program as well as during that first retreat. As I worked my way through *Universal Empathy*, it became clear to me that I could create an introductory program for lawyers, law students, and judicial officers that could be delivered in a similar way. It had occurred to me that this program was accessible to me because it was online and asynchronous, and it included video lectures, written materials, and recordings of guided meditations. I also realized that this course could be a nice next step for anyone who took the course I conceived because Christina and Chris go much deeper than I would in the introductory course, and they have many years of experience in sharing these teachings.

### **Literature About Mindfulness-Based Kindness and Compassion Training Programs**

In 2018, Weng et al. published a study that was a preliminary examination of a subset of participants in a previously published data set to compare the visual attention to human suffering

and neural responses to suffering of two groups: one that had compassion meditation training and one that had cognitive reappraisal training (Weng et al., 2018). The cognitive reappraisal training group was the active control. The researchers were interested in studying the outcomes of these two modalities because of the different orientations of self between the two. Cognitive reappraisal training is a practice where emotions are regulated for a different motivational goal, more self-oriented. The compassion training is more other-oriented and enhances prosocial motivation and action (Weng et al., 2018). “Therefore, individual differences in visual preference to suffering due to the different trainings may reflect different motivational goals, which could result in differential associations with responses indexed by amygdala activation” (Weng et al., 2018, p. 771).

Fifty-six participants completed the study, which included being randomized into either compassion or reappraisal training, completing two weeks of 30-minute daily training (for at least 11 of the 14 days), and attending a functional magnetic resonance imaging (fMRI) session before and after training (Weng et al., 2018). Participants were healthy adults (ages 18-45) and were naïve to meditation and cognitive-behavioral therapy. The groups were balanced for gender and ethnicity.

Participants were at the laboratory on three occasions. The first was when they were randomized, briefly instructed on the assigned practice, and practiced in a fMRI. The second visit was a week later, and they completed the pre-training fMRI and began training later in the day. Visit three was two weeks later and included the post-training fMRI and an altruistic behavior task, which took place outside of the scanner (Weng et al., 2018).

The trainings both used guided audio instructions via the Internet or a compact disc for 30 minutes a day for two weeks. The compassion group practiced cultivating feelings of

compassion for four different target groups: self, a loved one, a stranger, and a difficult person. They imagined the person and then repeated compassion-generating phrases, such as “May you be free from suffering.” They were also instructed to pay attention to bodily sensations and to envision a golden light extending from their heart to the heart of the other person (Weng et al., 2018). This training is often called “metta meditation.”

The reappraisal trainees practiced re-interpreting stressful events to decrease negative affect. These could include having an argument with a significant other. Strategies included thinking about the situation from a different perspective, thinking about the situation from a friend or family member’s perspective, and imagining that time had passed and that a positive outcome had occurred (Weng et al., 2018).

While in the fMRI machine, the participants were shown pictures of two people at a time—one who was suffering and one who was non-suffering. An eye tracking system was used to measure the eye movement of each participant, which was then connected to how active the amygdala was (Weng et al., 2018). The other post-training assessment was a game meant to test altruistic behavior called the “Redistribution Game,” an economic decision-making task. This task models unfair treatment of a stranger and the participant’s willingness to redistribute funds at a personal cost (Weng et al., 2018).

The researchers were careful to note that their results were preliminary, due to the small sample size. However, that does not make their findings any less interesting. Their findings suggest that after compassion meditation training, participants who engage more with suffering while actively generating compassion showed decreased activation in the amygdala and the right anterior insula and orbitofrontal cortex. These regions are known to process negatively valenced and arousing stimuli (Weng et al., 2018). They found that the reappraisal training group had

greater visual preference for suffering due to training that was not associated with amygdala activation and showed increased activation in the right anterior insula and orbitofrontal cortex (Weng et al., 2018).

The researchers reported that “these findings may suggest that compassion training may support greater visual engagement with suffering (vs. non-suffering) while mitigating neural responses to aversive events that may activate the sympathetic nervous system and inhibit prosocial behavior, therefore cultivating a more balanced relationship with stimuli of suffering” (Weng et al., 2018, p. 9). They went on to say that “this may suggest that compassion trainees may be learning to visually engage more with suffering while cultivating a more equanimous emotional response” (Weng et al., 2018, p. 10).

Although this study is preliminary due to low sample size, it does suggest that engaging in compassion may be a useful strategy in situations where attention needs to turn toward suffering and may help individuals stay calm in the face of suffering and enable them to engage in prosocial action (Weng, 2018).

Compassion encompasses self-compassion, and here the relevant research is found in the work of Drs. Kristin Neff and Christopher Germer. The Neff and Germer work studied self-compassion to figure out what its components are, to operationalize it, and then to test programs that teach it (Neff & Germer, 2012). Neff and Germer teach that one cannot fully practice compassion with others until compassion is practiced for oneself. Self-compassion is therefore an essential addition to the contemplative practices toolbox. An operationalized self-compassion model can be helpful to address the anxiety, depression, addiction, and suicidal ideation found by the well-being studies, and can make more accessible kindness, compassion, empathetic joy, and equanimity.

Compassion and self-compassion are inextricably bound up in the stories we tell about ourselves and others—a notion powerfully illustrated by this country’s ongoing discourse with respect to race and racism. Unfortunately, race and racism are little discussed by the Task Force’s report, nor is there any discussion of cultural differences and how they affect the well-being of non-white lawyers. Since the Task Force’s report, however, the ABA has issued three reports about women in the law, and one report specifically details the experiences of women of color in the law. The widening of the dialogue with and about historically marginalized groups presents an opportunity to interject much-needed compassion through, for example, the grounding of narratives on the principles contained in the brahmavihāras. Luckily, Rhonda Magee’s work is very supportive in this work (Magee, 2019).

The timeliness of this insight finds support in remarks delivered by Vandana Shiva at the 2021 Mind & Life Summer Research Institute in June. Shiva remarked on how Descartes and other thinkers separated the heart from the mind. The mind was valued above all else, which Shiva sees as an attack on the feminine and on nature (Shiva, 2021). This disconnect has caused all sorts of suffering, such as the climate crisis, which was this year’s Summer Research Institute theme. Likewise, the well-being crisis in the legal profession cannot merely be reasoned with. The profession must also engage with the practices of the heart—kindness, compassion, empathetic joy, and equanimity—to balance out the practices of “improving” the mind. Working with practices to reconnect the heart and mind into a single heart-mind is an effective strategy to lessen suffering.

Equanimity is another component of the practice of compassion and self-compassion, according to another presenter at the Summer Research Institute, Roshi Joan Halifax. Equanimity is sometimes considered to be a flattening out, but it is actually an opening up. It is

the ability to hold everything, even when we see harm, and to have resilience to persist (Halifax, 2021). Equanimity is not a lofty, unattainable condition. It is in fact attainable, even if only for a moment. To attain it takes practice and skill and a willingness to begin again over and over again. Equanimity finds its intersection with self-compassion in the subject of lawyer burnout, a frequent issue in lawyer well-being work. Consequently, making equanimity attainable and sustainable holds tremendous healing potential.

### **Alchemizing Lessons to Create the Training Program**

As I think about the underlying foundational principles of the journey I've been on to discover the dhamma (sometimes defined in English as "truth") and put it into practice over the past two and a half years, the two concepts that arise are interconnection and impermanence. When I remember that all life is interconnected with all other life, when I really take that to heart and accept it as the dhamma, kindness, compassion, empathetic joy, and equanimity suddenly become much more easily accessible to me. And when I sit with and fully understand the dhamma of impermanence—that each moment is impermanent, each feeling is impermanent, and each life is impermanent, that also allows every single thing to become more accessible to me, including kindness, compassion, empathetic joy, and equanimity. Although I am nowhere near reaching awakening (and likely never will), I believe that I must address the suffering I see within my profession and have the courage to say, "I see your suffering because it is also my suffering, and I have found a way to relieve my suffering. Would you like me to tell you show you how?"

The intention of this paper is to persuade my colleagues to consider engaging with the training program that I have created as the creative component of this project. It is the warmest invitation I can offer to my colleagues of the bar, bench, and my future colleagues still in the

academy to consider that the work we do is full of suffering, and that to do it to the best of our abilities, which is what every other living being caught in this inescapable web of mutuality needs and deserves, we need support in reconnecting our hearts with our minds so we can integrate the wisdom of both into our way of being in the world. This is my offering to them, grounded in my love for them and for every being who is in community with us.

May our practice benefit all beings.

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