

 **potential project**

The Empirical Case For Corporate Based Mindfulness Training (CBMT) in Law Firms



Executive Summary



What drives exceptional performance in lawyers? People often believe that is analytical capability. However, studies show that top-performing lawyers actually excel in soft skills such as stress management and interpersonal competencies. Moreover, mindfulness – the capacity for directing and sustaining one’s attention – is a key driver of performance, especially in today’s environment of mounting pressure, disruption and high turnover. Fortunately, mindfulness can be trained.

This white paper summarizes empirical research from a variety of sources on how mindfulness impacts lawyers on a variety of attributes: efficacy, focus, client relations and communications, resilience and stress, staff turnover, and creativity and innovation. It also highlights the professional value of these attributes to lawyers and their firms. Furthermore, this paper shares quantitative and qualitative information on the impact of Potential Project’s corporate based mindfulness training (CBMT) programs at law firms and other organizations with knowledge workers.

Introduction

The career path of a business lawyer tends to be very steep, with long working hours, commitment to excellence, a constant bombardment of emails, and challenging work-life balance. The demand for consistently high performance and efficacy is relentless. But what lies behind performance and efficacy? In one word – the lawyer’s mind. This usually refers to intellectual capacity for mastering the law and applying it to complex issues. This idea has a long and deep tradition. One expression of it can be seen in heavily relied-upon metrics for recruiting: GPA, LSAT, law school pedigree, and law review membership.

However, research does not actually support these as reliable predictors of efficacy. Professor William Henderson notes:

“Law partners [may believe] that law school ranking plus grades provide the greatest likelihood of hiring the most analytically gifted students. Further, these partners may believe that analytical reasoning may be the most useful and reliable predictor of future performance. The academic literature, however, provides no support for this view.”¹

By contrast, research indicates that two other competencies – soft skills and the capacity for focus – are strong predictors of performance. I consider “soft skills” as something of a misnomer and prefer to call them “facilitation skills” – skills that facilitate legal expertise.

Professor Emerita Susan Daicoff writes:

“Studies show that top-performing lawyers outstrip other lawyers in competencies such as stress management, independence, self-knowledge, general mood, problem solving, and interpersonal competencies.”²

According to Daicoff, only one-quarter of empirically validated efficacy factors are found in a typical law school curriculum – leaving a considerable gap between what law students train in and what lawyers actually do. Researcher Randall Kiser has also exhaustively explored and validated the importance of facilitation skills in his milestone work, *Soft Skills for the Effective Lawyer*.

My own research has identified that mindfulness – the capacity for directing and sustaining one’s attention – is a factor of prime importance for lawyer efficacy. This makes perfect sense given that lawyers depend on their ability to focus for a range of core tasks such as listening, writing, discussing, planning, problem-solving, reflecting, etc.

Fortunately, mindfulness and facilitation skills are readily trainable. Modern neuroscience has shown that the capacity for focus can be substantially increased through regular mindfulness training. Performance aside, mindfulness offers a host of additional, powerful benefits such as decreased stress, increased emotional regulation, and improved work-life balance, to name but a few.

Corporate based mindfulness training (CBMT) integrates these two fundamental skills for lawyer efficacy – facilitation and focus – into a practical training protocol with a proven track record.

I and my colleagues, Tamzin and Denis, have done our best to document this track record, the results of which you are holding in your hands.

JENS NÄSSTRÖM, Occupational Psychologist



¹Henderson, William D., *Law Firm Strategies for Human Capital: Past, Present, Future* (June 1, 2012). *STUDIES IN LAW, POLITICS, AND SOCIETY*, Austin Sarat, ed., Emerald Group Publishing Limited, June 2012 ; Indiana Legal Studies Research Paper No. 189. Available at SSRN: <https://ssrn.com/abstract=1809864>

²Daicoff, Susan, *Lawyer, know thyself: A review of empirical research on attorney attributes bearing on professionalism* (1997). *American University Law Review*, 46, 1337-1427.

Empirical Research on Mindfulness For Lawyers

Efficacy`

Efficacy is perhaps the highest sought outcome in the law profession. Career success is correlated with high productivity and work quality. While the pressure to perform at high levels can be a stimulating challenge, it may also drive lawyers to experience counterproductive stress levels. Low efficacy—negative evaluations of self-rated productivity and job satisfaction—is often related to burnout, brought on by the intense pressure to succeed. Burnout is frequently expressed through psychological resignation, poor self-worth, and social withdrawal from colleagues and clients. In contrast, high efficacy is a sign of positive work engagement focused on highlighting one’s strengths and accomplishments. This is critical to the long-term success and well-being of lawyers.

The Impact of Mindfulness on Efficacy

Numerous studies demonstrate that mindfulness increases lawyers’ efficacy. Some of the most important factors behind increased efficacy are the **enhanced ability to maintain focus** and **conserve energy** on one hand, and to **regulate stress, negative thoughts and feelings** on the other hand [Dane & Brummel, 2014; Kozlowski & Salas, 2010;

Banich, 2009; De Gray Birch, 2012; Shao & Skarlicki, 2009). Other studies point to mindfulness increasing efficacy by **increasing awareness and decreasing absentmindedness** [Glomb et al., 2011; Shao & Skarlicki, 2009]. One study found a 17% increase in efficacy after eight weeks of mindfulness training [Ström & Ström, 2013].

Studies have also shown that mindfulness increases various attributes of work that are related to efficacy. Reb et al. [2013] found increased efficacy based on the psychometric results of **increased task performance, greater organizational citizenship behaviors, and lower deviance**. Mindfulness is also correlated with **increased reliability in production** [Weick & Sutcliffe 2006; Weick et al. 1999] and **better productivity** in industries with intense competition and rapid change [Dane, 2011]. In addition to quantitative improvements, mindfulness enhances lawyers’ **creativity and quality of work**. Greenberg et al. [2012] “found a tremendous impact of focused- attention (mindfulness) and open-monitoring meditation (observing without judging) on creativity.”

Potential Project CBMT Program - Impact on Efficacy

Herbert Smith Freehills UK Lawyer Team Vendemore / Roche / IKEA



Potential Project*



Näsström, 2016



University of Stockholm (Ström and Ström, 2013)



Karolinska Institutet (Swartling, 2015)



Karolinska Institutet (Swartling, 2015)

*Self-rating, using a non-validated scale.

Measures used validated, self-rating scales, unless otherwise indicated. This self-rating was correlated with an increased number of clients and projects, which supports the validity of self- rated efficacy.

“I got so much out of personally attending the program that I have gone back and done it a second time with my whole team, with both my legal staff and support staff. The team has responded really well, and it has opened up a dialogue we have not had before. Now we talk to each other when we want to be interrupted or when we want to just allow ourselves time to focus on the task at hand... So for me, mindfulness is really the key to unlocking potential, time, and happiness, and I’d encourage it to all.”

CELIA DAVIES, Partner Herbert Smith Freehills, Melbourne

Focus

The strongest predictor of lawyers' success, according to some authorities, is focus – the ability to maintain sustained attention on one's object of choice; it is not intellectual brilliance, university rank, law school rank, law school pedigree, LSAT score, or grades [Goldberg, 2007; Henderson, 2008; Näsström, 2017].

Capacity for focus and awareness achieved a top ranking among efficacy factors in a 2017 study of Swedish lawyers [Näsström]. This outcome was replicated in a collated survey of 98 British and Australian lawyers [Näsström, 2016]. It is important to remember that all critical tasks for lawyers, such as listening, problem solving, writing, arguing etc., are highly cognitive activities and therefore are wholly dependent on lawyers' capacity for sustained focus.

Mind wandering impairs performance in terms of both quality and quantity. Mind wandering is especially an issue in our modern technological environment, which produces constant work interruptions and distractions. A large study showed that mind wandering occurs 46.9% of the time in an average population [Killingsworth & Gilbert, 2010]. There is also a link between mind wandering and depression. Fortunately, mindfulness can reduce mental wandering [Deng et al., 2012].

A phenomenon related to mind wandering is multitasking, which results in more mistakes, poor prioritization, lowered efficacy, reduced energy, hampered creativity, lowered well-being and more time needed to complete a task [Ophir et al., 2009].

Some of these outcomes were replicated in another study that concluded that mind wandering also makes us less creative, slower, and more prone to making poor decisions [Dean & Webb, 2011]. We also get worse at multitasking the more we do it; one might say that multitaskers are the worst at multitasking. According to Stanford University professor Clifford Nass, multitasking not only makes it harder for us to concentrate, but also to learn new things and to treat our coworkers nicely [Ophir et al., 2009].

The Impact of Mindfulness on Focus

Numerous studies have replicated the positive effects of mindfulness on **focus, endurance, and multitasking** [Schmertz, Anderson, & Robins, 2009; Evans, Baer, & Segerstrom, 2009; Hodgins & Adair, 2010; Moor & Malinowski, 2009; Specia et al., 2000; Bishop et al., 2004; Posner & Peterson, 1990; Chambers, Lo, & Allen, 2008; Tang et al., 2007; Slagter et al., 2007; Moore & Malinowski, 2009; Zeidan et al., 2010; Maclean et al., 2010; Valentine & Sweet 1999; Jha et al., 2010].

Mrazek et al. (2013) found that mindfulness both **increases the capacity of the working mind and reduces mind wandering**, which replicated an earlier finding about mind wandering [Mrazek, 2012]. Two attributes closely related to mind wandering are **employee awareness** and **employee absentmindedness**. Mindfulness can have positive effects on both of these, which in turn leads to **increased well-being** and **increased ability to perform** [Reb et al., 2013].

Potential Project CBMT Program - Impact on Focus

Herbert Smith Freehills UK Lawyer Team Vendemore / IKEA / Global Pharma Company



Potential Project*

*Self-rating, using a non-validated scale.



Näsström, 2016



Karolinska Institutet (Swartling, 2015)



Karolinska Institutet (Swartling, 2015)

Potential Project CBMT Program - Impact on Multitasking

Measures used validated, self-rating scales, unless otherwise indicated.



Herbert Smith Freehills Näsström, 2016



UK Lawyer Team Näsström, 2016

"I have made changes in my work day, and now put aside space in the morning to do my hard tasks. I find that if I focus and get them done in the morning my stress levels reduce because in the past, it was usually those tasks that I was getting to at 7 PM each night."

CELIA DAVIES, Partner Herbert Smith Freehills, Melbourne

Client Relations and Communication

There is ample evidence that clients and lawyers have substantially different ideas of client service. Lawyers consistently overrate themselves compared to their clients' evaluations:

- 62% of law firms in a study rated themselves “A” for overall performance, contrasting with a mere 19% of their clients giving them an “A” [Kiser, 2010]
- 32% of corporate counsel would recommend their primary firm [BTI Consulting Group, 2006]
- 57% of clients agree with the statement, “Most lawyers are more concerned with their own self-promotion than their client’s best interests” [American Bar Association Section of Litigation, April 2002]
- 81% in a study asserted that it was important that lawyers “do a better job of communicating with their clients” [Ronda, 2007]

The ability to listen to clients is the basis for understanding them and their case, including their motives and emotional states [Portnoy, 2000]. Social skills have been found to be a common trait among successful lawyers [Shneidman, 1984], and interpersonal skills have been correlated with top performers [Kelley & Kaplan, 1993]. Furthermore, empathy and interpersonal skills have been found to be characteristics among top Canadian corporate litigators [Irene, 2002].

The significance of effective communication for the professional success of lawyers has been pointed out by Kiser (2017), as well as by Shultz and Zedeck (2009), who identified four communication skills among the 26 effectiveness factors: writing, speaking, listening, and advocating.

The Impact of Mindfulness on Client Relations and Communication

Numerous studies have demonstrated the value of mindfulness in helping lawyers improve their client relations and communication. While Risking (2002) pioneered this discussion, the interpersonal gains for lawyers have been outlined in numerous studies [Codiga, 2002; Freshman, Hayes, & Feldman, 2002; General Mills, 2010; Shapiro et al., 1998; Dekeyser et al., 2008].

The impact of mindfulness has similarly been noted in other professions, such as healthcare. For instance, one’s natural capacity for mindfulness and enhanced capacity through mindfulness training improved communication, **including listening with enhanced awareness and being less judgmental of others** [Beckman et al., 2012], as well as **boosting client-rated relationships** [Beach et al., 2013]. Mindfulness may also **improve communication** and the **capacity to communicate emotional content** [Wachs & Cordova, 2007].

Potential Project CBMT Program - Impact on Client Relations and Communication



*Self-rating, using a non-validated scale.

Measures used validated, self-rating scales, unless otherwise indicated.

“One of things in the program they encourage is really to focus on listening to someone. I often think, as lawyers we’ll have an anxiety, or at times confidence if you will, to establish our credentials, and we’ll often do that by thinking, ‘let me just blurt out everything I know’. A particular client I met this morning raised a quite complicated question. Halfway through, I thought, ‘I know the answer to this’, but then I stopped myself to let him finish. Then one or two other elements came out, and I paused and went through the response. The reaction was great for him as well; he had a real sense that I actually had listened to him and understood him. I think the benefits in having a real sense of inner calmness in yourself and how you interact with clients and others are really spectacular. If you think about doing the course, I can definitely recommend it.”

PETER DUNNE, Partner Herbert Smith Freehills

“The perceived social effects are communal feelings, fewer conflicts, and more effective communication.”

MARIA SWARTLING Researcher at Karolinska Institutet,

evaluating the impact of CBMT at a global pharma company through qualitative interviewing

Resilience and Stress

Resilience is the general quality that allows individuals to come back after a severe strain. In law firms, this strain takes the form of stress and emotional exhaustion, whereas resilience is strongly correlated with stress and stress management. Stress is a major issue for lawyers across the globe. For instance, there is major consensus within the field of legal psychology that American lawyers experience high levels of stress [Daicoff, 1997; Elwork & Benjamin, 1995; Elwork, 1997]. In 2004, almost half of the health insurance cases for lawyers in Sweden were stress-related [Hellberg, 2004] and 48% of long-term sick leave was due to “psychological problems” often associated with stress and burnout [Swedish Bar Association, 2004]. Studies also confirm that the harmful effects of stress are widespread within the profession, with lawyers experiencing depression,

anxiety disorders, burnout, and substance abuse [Allen, 1997; Andrew, Benjamin, Darling, & Sales, 1990; Eaton, Anthony, Mandel, & Garrison, 1990].

The Impact of Mindfulness on Focus

The stress-relieving effects of mindfulness are well-supported in multiple studies [e.g. Chisea & Seretti, 2010; Klatt, Buchworth, & Malarkey, 2008; Astin, 1997; Bränström et al., 2010; Nyklíček & Kuipers, 2008; Oman et al., 2008; Shapiro et al., 2005; Specia et al., 2000; Williams et al., 2001]. After only eight weeks of mindfulness training, one study [Ström & Ström, 2013] measured a 32% reduction in stress, while another study [Gaden Jensen, working paper] measured a 25% reduction. A 76% reduction of sick days has also been reported [Barrett et al., 2012].

Potential Project CBMT Program - Impact on Stress Levels

Herbert Smith Freehills UK Lawyer Team Vendemore / Roche / IKEA



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University of Stockholm
(Ström and Ström, 2013)



Karolinska Institutet
(Swartling, 2015)



Karolinska Institutet
(Swartling, 2015)

Potential Project CBMT Program - Impact on Emotional Exhaustion Levels



UK Lawyer Team
Näsström, 2016

*Self-rating, using a non-validated scale.

Measures used validated, self-rating scales, unless otherwise indicated.

“The Corporate Based Mindfulness Training has had a profound effect on me. My team says that I have become more serene, and I notice how quickly I feel stressed if I don’t do my daily practice. I have noticed a marked difference in clarity of thought and feel much calmer.”

NICOLE LACY, Special Counsel, Herbert Smith Freehills

Staff Turnover

Staff turnover in the law industry is notoriously high. Law firms lose on average almost one-fifth of their associates every year (Williams, 2008), and 37% of associates at big law firms leave the firm after 3 years of practice (Jones, 2006). Talent loss aside, associate turnover was calculated in one Canadian study of over 1,400 lawyers to cost an average of \$315,000 each [i.e., twice the average associate's salary] (Catalyst, 2005). Another review estimated attrition costs to be 150%-200% of each attorney's salary (Project for Attorney Retention, 2000). Negative effects of staff turnover in law firms include lost productivity (for the vacant position and for the team and managers who cover for the vacant position, as well as those who train the new hire), increased labor costs (due to overtime or contractor needs, hiring, and onboarding costs), decreased customer satisfaction, increased future turnover, and loss of institutional knowledge (Saratoga, 2006).

The Impact of Mindfulness on Staff Turnover

There is a clear link between stress and employee turnover, and many who change jobs do so because they can't cope with the stress, not because they don't enjoy their workplace (Blomkvist & Skoglund, 2007). The effects of mindfulness on **decreasing stress** are well-documented (Lee & Ashforth, 1996).

There are also links between employee turnover and emotional fatigue (Wright & Cropanzao, 1998). Mindfulness has been shown to **reduce emotional fatigue** (Hülshager, Alberts, & Lang, 2012; Weinstein, Brown, & Ryan 2009; Narayanan et al., 2011) and a correlated **reduction in employee turnover** as a result (Narayanan et al., 2011).

Interpersonal issues also result in increased employee turnover (Gerstner & Day, 1997). Several studies show that mindfulness effectively **addresses the psychosocial problems of bad relationships, aggression, and conflicts** in the workplace (Davidson et al., 2003; Anderson et al., 2007; Heppner et al., 2008; Saavedera et al., 2010; Wachs & Cordova, 2007; Barnes et al., 2007; Riskin, 2002).

Potential Project CBMT Program - Impact on Employee's Intention to Quit

National Telecom Organization



Potential Project



"As a large global law firm we need to be focused, be clear in our thinking, and lift our performance. Mindfulness is the key to achieve that. We partner with Potential Project because their program is evidence-based, practical, and engaging. And for my audience of highly critical thinkers, it's a winner."

NICOLE LACY, Special Counsel, Herbert Smith Freehills

Creativity and Innovation

Creativity and innovation are critical for growth, improved productivity, increased profits, and sustained success in certain business models (Heunks, 1998; Morris et al., 1974). Yet common stressors in the business world, such as adverse organizational climates, weak support systems, challenging market environments, time pressures, and environmental uncertainties all inhibit creativity (West, 2002). Methods for reducing the effects of stress and enhancing creativity in the workplace are needed. The World Economic Forum has concluded that we are now entering the fourth industrial revolution, in which technology and AI will make a quantum leaps in their ability to perform knowledge work. Some experts predict that computers within ten years will outperform the human brain (Feinberg, 2017). The computer system, Watson, has been identified as the world's #1 chess player, the #1 Jeopardy player, and the #1 doctor (Friedman, 2014).

The legal profession is also drastically changing as AI disrupts the industry and algorithms take over certain legal tasks. In a recent study by LawGeex, 20 experienced US attorneys were outperformed by algorithms both in accuracy and in speed while spotting risks in NDAs:

- Accuracy: humans at 85% versus algorithms at 94% (and becoming better in the near future)
- Speed: machines were 212 times faster in performing the task

In a competition at CaseCrunch in London in 2017, over 100 lawyers lost against software in predicting the outcomes of historic insurance misselling claims. While there was criticism against the way information was distributed and for using lawyers without subject matter experience, the results have given lawyers cause for concern.

In this environment, creativity and innovation will become increasingly critical to remain relevant, adapt,

and offer the – still – distinctly human qualities of divergent thinking.

The Impact of Mindfulness on Creativity and Innovation

Mindfulness reflects the ability to attend to emotions, thoughts, and sensations occurring in the present moment. Mindfulness practices are believed to **enhance multiple aspects of creativity, including perceptual change, invention, fantasy, and visualization** (Dawson 2003; Horan 2009; Cowger et al., 1982; Ding et al., 2014a and 2014b; Baas et al., 2014). Mindfulness may **facilitate problem solving that requires insight and creative responses** (Ostafin et al., 2012).

The mindfulness practice of detached, non-judgmental witnessing of thoughts, feelings, and sensations **reduces cognitive rigidity**. In Greenberg et al. (2012), mindfulness participants had less “tendency to be ‘blinded’ by experience,” in that they were **less likely to persevere in the use of old, familiar strategies**. Horan (2009) concluded that mindfulness supports **creative thinking and cognitive flexibility**, by **enhancing awareness, sensitivity, cognitive performance, and novelty seeking**, while **reducing habituation to stimuli and strong associative thinking**. Colzato et al. (2012, 2014) found that open-monitoring meditation, which promotes flexible and unrestricted attention to sensations or thoughts, **encourages the generation of multiple new ideas** (“divergent thinking”).

The benefits of mindfulness on creativity have been noted across multiple settings, disciplines and cultures, from education (Sarath, 2006; Justo et al., 2014) to business (Langer et al., 2000). Apple, Google, McKinsey & Company, Proctor & Gamble, General Mills, Target, and Lululemon (The Mindfulness Initiative, 2016) have harnessed the benefits of meditation to enhance creativity.

Potential Project CBMT Program - Impact on Creativity

AXA

*Self-rating, using a non-validated scale.



Potential Project*

“To me, it is essential that my law firm is helping me innovate because if they are not, there are other law firms I can go to... When a firm innovates with me, this is something really special and makes me think very highly of what a great business partner the firm is.”

GC, large media and telecommunications company

[from “Legal Upheaval: A Guide to Creativity, Collaboration, and Innovation in Law”, Michelle DiStefano]

“Since undertaking mindfulness training, I have been pleasantly surprised by the positive impact the training has had on my creativity. By choosing to focus on only one task at a time, I engage in more useful conversations with my colleagues and have also found that my enhanced concentration has significantly improved my overall creative output.”

NICK FOLEY, President SE Asia and Japan, Landor

Conclusion



A large and diverse body of research shows that mindfulness offers significant benefits to lawyers regarding various drivers of performance. Thus, corporate mindfulness supports a law firm's strategic business objectives. Furthermore, mindfulness is not a fixed trait but instead is something that can be developed within a relatively short period of time.

Law firms wishing to foster greater mindfulness within their organizations can:

1. Give attorneys permission to set clear boundaries about when they are available, to help manage stress and well-being.
2. Set visual reminders and digital cues about taking pauses between tasks, to bring more calm, clarity, and focus throughout the day.
3. Implement a corporate based mindfulness training (CBMT) program within their organization for onboarding and ongoing development.

Contact Potential Project to learn more.

Bios

About the Authors

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Partner, Potential Project Sweden and Senior Trainer Director, The Lawyer Performance Project

Jens has researched, trained, and supervised lawyers for the past fifteen years in a wide variety of settings in the legal sector in the Nordic countries: the Swedish Bar Association, the Swedish Bar Exam, the Danish Bar Association, Thomson Reuters, the Norwegian Union of Legal Workers, the Swedish General Counsels' Association, and many law firms in the Nordic countries.

TAMZIN MUIR

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A lawyer for over 10 years, Tamzin qualified into Litigation at Herbert Smith Freehills before moving in-house at ITV Studios and BBC Worldwide. Retraining as a mindfulness teacher in 2014, she undertook an MSc in Neuroscience, specializing in mindfulness for mental health, and has since delivered training to over 2000 people across all industries and in both the private and public sectors, with a particular interest in the legal sector.

DENIS CORTIER

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Country Manager, Potential Project Belgium and Senior Trainer Senior Consultant, Lawyer Performance Project

With 25 years of professional coaching experience for over 1000 professionals of 60 nationalities on four continents, Denis supports global organizations to achieve strategic objectives. Building on years of teaching and practicing mind training himself, Denis is well-positioned to help embed mindful leadership in organizations to enhance performance, innovation, and resilience.



About Potential Project

Potential Project is a global leadership training, organizational development and research firm. We help leaders and organizations enhance performance, innovation and resilience through mindfulness. In addition to our in-depth experience helping lawyers and law firms, we partner with forward thinking companies like Cisco, LEGO, Accenture, Microsoft and 450+ other clients globally to help create people centric cultures and truly human leadership.

We are fortunate to have introduced the Potential Project mindfulness program to our firm. The training itself was a fantastic way to bring teams together in a supportive and safe environment to focus on building skills such as focus and prioritizing, which in my view are fundamental to high performance in our global law firm environment.

“

The continued use of mindfulness is proving critical for our people to not just manage in our fast world of increasing client and internal demands, but to grow and thrive. It helps achieve the mental space to enable the high-level thinking our clients expect us to bring to help solve their unique challenges.”

SUE GILCHRIST, Partner Herbert Smith Freehills, Melbourne