

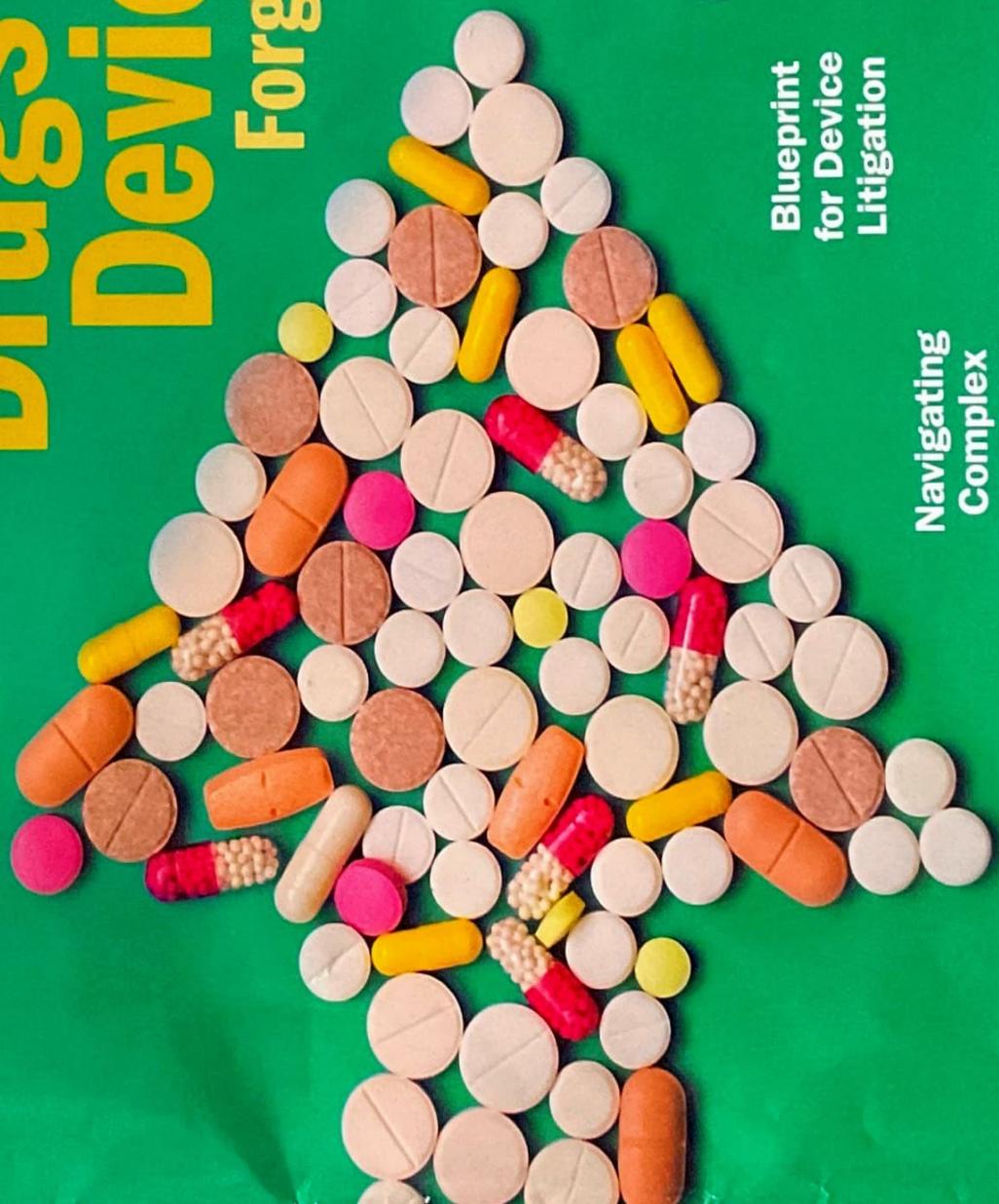
American  
Association  
for Justice

[www.justice.org](http://www.justice.org)

May 2023

# Drugs & Devices

## Forge Ahead



Keep Your  
Cool During  
Negotiations

Blueprint  
for Device  
Litigation

Navigating  
Complex  
Settlements

ALSO INSIDE  
Representing  
Abused Athletes

Impeachment  
Fundamentals

# Mindfulness for Trial Lawyers

BY WAYNE COHEN

**A**nyone who has tried a case knows the toll that a trial can take. The rollercoaster of emotions and the constant conflict inherent in the process can create inordinate stress. The pressure impacts our health, mental well-being, and relationships with friends and family. The days and weeks preceding a trial can be particularly demanding. Long hours of preparation can lead to decreased energy, fatigue, physical ailments, anxiety, and depression.

Over the past two decades much has been written about the use of "mindfulness" to help combat stress, but in my experience, trial lawyers have been slow to adopt some of these basic tools. Mindfulness is defined as an awareness of the present moment, which is achieved in part through meditation, breath work, and intentional thought practices.<sup>1</sup> Meditation is a vehicle for mindfulness—it helps take us back to the present moment and brings relief from the actions of the past and the uncertainties of the future. In the present moment we enjoy improved clarity of thought, and the result is a more balanced approach to the challenges we face.

By adopting a mindfulness practice, trial lawyers can have better problem-solving skills and a calmer approach to litigation. Here are some practical tips on using mindfulness to become a better advocate for your client—as well as to improve your relationships and overall well-being outside the courtroom.

**The science of meditation.** As trial lawyers, we live in a world of logic-based thinking—the experts we call at trial must rely on peer-reviewed science grounded in logic. Similarly, the power of mindfulness for trial lawyers lies in peer-reviewed science showing that meditation calms the mind.

Several studies have concluded through imaging, testing, and patient reports that even a limited amount of meditation improves focus and decreases anxiety. In one study conducted in 2008 at the University of Wisconsin, expert meditators were placed in fMRI machines to assess alterations in patterns of brain function relative to their meditation practices.<sup>2</sup> The imaging conducted in this study—the first of its kind—confirmed that meditation can produce structural changes in the brain.<sup>3</sup> A few years later, a team led by Harvard-affiliated

researchers at Massachusetts General Hospital concluded that meditation can change the brain's gray matter.<sup>4</sup> And in 2017, Stanford scientists identified a small group of neurons that communicates activity in the brain's respiratory control center to evoke a more tranquil and calm state of being.<sup>5</sup> That study showed that taking even a few short, deep breaths calms the mind quickly.<sup>6</sup>

Decades ago, a mindfulness practice for trial lawyers would likely have been considered a mystical, new age activity. But the aspirations achieved through meditation and mindfulness are in no way antithetical to zealous advocacy. Today, physicians, professional athletes, boxers, and others use meditation to improve performance. Even the U.S. Marine Corps has adopted meditation practices to reduce stress, counter PTSD, and improve overall well-being.<sup>7</sup>

**Getting started.** Integrating mindfulness into the practice of law does not need to be overly complicated or time consuming. Here are four tips for the active trial lawyer.

- **Adopt a sustainable practice.** For most new meditators, three 5-minute sessions daily is reasonable. Early morning, midday, and evening are perfect times. Find a quiet area in your home, office, or even a park bench, and follow a short, guided meditation. If you can't find a quiet area, noise-canceling headphones will do the trick. Committing to 15 minutes per day for 30 days can bring meaningful changes. There are beginner meditation programs available online, and mobile apps such as Headspace, Calm, and Insight Timer are helpful for the novice meditator.
- **Share the benefits of mindfulness.** Speak to your partners, associates, and paralegals about the power of meditation. Educating colleagues and even bringing some meditation books to share with the office can help morale and provide a sense of collective purpose. Like you, your colleagues and staff will be more relaxed in the office; this translates to greater productivity and increased happiness. Sharing your knowledge about meditation and mindfulness can also benefit your clients and witnesses before they testify.
- **Keep a mindfulness journal.** Document your lived experiences by writing for a few minutes at the end of every day. Observe the correlation between your stress and meditation. Putting pen to paper can help you assess the role that meditation plays in your life as a trial lawyer. Journaling also helps create a sense of order and

**Wayne Cohen** is the founding partner of Cohen & Cohen in Washington, D.C., and can be reached at [wrc@cohenandcohen.net](mailto:wrc@cohenandcohen.net). The views expressed in this article do not constitute an endorsement of any product or service by Trial or AAJ.

accountability, and the act of writing can help provide structure to measure your progress.

- *Use breathing techniques.* As courtroom gladiators, we each have our strengths and weaknesses. Some of us may be better at opening statements and direct examinations, while others may be better at cross-examinations and closings. Regardless, during whatever stressful events you encounter, use meditation-based breathing techniques to achieve greater mindfulness. Rare is the judge who refuses attorneys' requests for a few moments to review their notes or gather their thoughts. Three deep breaths often is enough to help center the mind and improve focus.

Juggling the challenges of deadlines, client demands, and long hours—not to mention opposing lawyers—can wreak havoc on our emotional well-being. But experiencing severe stress in our profession is not a fair accompli. Incorporating mindfulness practices through meditation and breathwork can improve mental health, focus, and overall advocacy skills. Mindful lawyers who are calm and balanced are better client advocates. Perhaps it was the Roman Emperor Marcus Aurelius who best described the power of mindfulness. A

war strategist and philosopher whose teachings came—in part—from Buddhist dharmas, he put it well in reminding us to concentrate and “stop being aimless, stop letting your emotions override what your mind tells you.”<sup>8</sup>

#### NOTES

1. Establishing a solid working definition of “mindfulness” is a crucial starting point. Originally rooted in ancient Indian wisdom texts, its meaning has morphed over centuries. Jon Kabat-Zinn is often credited with the leading body of work that applies the practice of mindfulness to health in the West. See Jon Kabat-Zinn, *Watching the Mind*, <https://tinyurl.com/2p8rpma6>.
2. Richard J. Davidson & Antoine Lutz, *Buddha's Brain: Neuroplasticity and Meditation*, 25 IEEE Signal Processing Mag. 176 (Jan. 1, 2008), DOI: 10.1109/msp.2008.4431873.
3. *Id.*
4. Britta K. Hölzel et al., *Mindfulness Practice Leads to Increases in Regional Brain Gray Matter Density*, 191 Psychiatry Res. 36 (Jan. 30, 2011), DOI: 10.1016/j.psychres.2010.08.006.
5. Bruce Goldman, *Study Shows How Slow Breathing Induces Tranquility*, Stanford Med., Mar. 30, 2017, <https://tinyurl.com/y5rjzd5r>.
6. *Id.*
7. Julie Watson, *Meditating Marines: Military Tries Mindfulness to Lower Stress*, NBC News, Jan. 20, 2013, <https://tinyurl.com/2tmfuh3k>.
8. Marcus Aurelius, *Meditations* 18 (Gregory Hays trans. Modern Library 2003).

# Recently Released Litigation Packets of 2022-23



To purchase, scan the QR Code or head to  
[justice.org/litigationpackets](http://justice.org/litigationpackets)

## Handling Drowning Cases: From Filing to Trial

UPDATED CPAP and BiPAP Sleep Apnea Machines

NEW

NEW

NEW

NEW

NEW

Human Factors Experts

Slip and Fall: Restaurants

Crash Reconstruction Experts

EXCHANGE

Litigation Packets, Depositions, and Online Legal Research

AMERICAN FOR JUSTICE®  
The Association for Trial Lawyers