Integrating Mindfulness Theory and Practice into Trial Advocacy

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I. Introduction

The metaphor of trial as battle is deeply embedded in American culture. Not surprisingly, a take-no-prisoners approach is celebrated both in fiction and in fact. In the real world, however, the trial lawyer as warrior comes at a high price. In a profession beset with stress, early burnout and cynicism are common among trial lawyers. And, conversely, the few who seem to thrive in this environment often do so at some cost to themselves, their friends and family.[1]

Against this backdrop, integrating mindfulness theory and practice into the teaching of trial advocacy might seem a hopeless endeavor. Nevertheless, sponsored by a fellowship from the Center for Contemplative Mind in Society, I created a course that explores whether mindfulness theory and practice can help students realize their potential as effective advocates and make a career in trial work more humane and sustainable. This article explores my experience with this course.

II. Trial Advocacy Pedagogy: Strengths and Weaknesses

Trial advocacy is typically taught as a simulation-based course with a learning-by-doing pedagogy. Whenever possible, the courses take place in mock courtrooms, each with jury box, witness stand and judge's bench. Students are expected to stay in role during the trial exercises. While many instructors give brief lectures and employ group exercises, class time is largely devoted

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1. *See* Lawrence S. Krieger, What We're Not Telling Law Students--and Lawyers--That They Really Need to Know: Some Thoughts-In-Action Toward Revitalizing the Profession from Its Roots, 13 J. L. & Health 1, 10 (1998-99) ("It is no coincidence that the common caricature of lawyers includes shallowness, greed, and dishonesty—qualities that manifest in a personal environment devoid of real meaning. And the high rate of addiction among lawyers, by definition, reflects a loss of connection with our feelings and sense of inner self.").

to student performances of trial segments.[2] The National Institute of Trial Advocacy (NITA) offers teacher training workshops and many instructors use some variation of the NITA critique methodology, which provides students with concrete feedback and suggestions on a limited number of aspects of their performance.[3]

Trial advocacy courses are perceived as fun to teach and students generally give positive evaluations to these courses and their instructors. Moreover, virtually every student shows substantial improvement in technique and performance during the class. Nevertheless, over the years I have seen students struggle in two areas: figuring out how to adapt when "things fall apart"[4] and finding a way to develop an authentic trial persona.

A. "When Things Fall Apart"

One of the hardest moments for a trial lawyer is when everything goes wrong. Years later, most trial lawyers can vividly recall instances when key witnesses forgot important facts or contradicted themselves or when an unanticipated objection was sustained. Law students are particularly prone to a "deer in the headlights" reaction in these situations because their mastery of adaptive trial advocacy techniques and practical application of the rules of evidence is still nascent. Thus, even more so than for seasoned lawyers, the most difficult moments for trial advocacy students can be when their carefully prepared material crashes and burns. Traditionally, this can be a teaching moment about a particular trial technique, such as refreshing recollection, or to emphasize that once drafted, an examination must carefully be reviewed for possible objections.[5] And, of course, students can be reassured that with experience they will become more competent in handling these situations.

2. Many courses use a workbook with a variety of simple fact patterns to learn direct and cross examinations, exhibit foundations, as well as techniques such as refreshing recollection and impeachment with prior inconsistent statements. Some courses do the same but work from a single, longer trial packet. The culmination of the course is typically a several hour trial conducted by the students in teams of two or three.

3. In the classic NITA critique, the student is first told the subject matter of the critique ("I want to talk to you about leading questions."). Next, the instructor reads at least some of the student's exact questions or statements to provide concrete examples of the issues. Third, the student is told what was ineffective or effective about that portion of the performance and why. Fourth, the instructor explains how the trial task could be improved, either generally, or by modeling a small portion of the exercise back to the student.

4. Pema Chödrön, When Things Fall Apart: Heart Advice for Difficult Times 6 (Shambhala 1997).

5. *See* Steven Lubet, Modern Trial Advocacy: Analysis and Practice 50, 280 (Nat'l Institute for Trial Advocacy, 3d ed. 2004) (describing the need for refreshing recollection and the process for going about it, as well as how to anticipate objections as part of preparation for trial).

However, over the past few years, I have come to look at simulation "train wrecks" through the lens of mindfulness theory.[6] I now see them as a powerful moment at which the student's belief in the illusion of control is shattered. While it is human nature to seek more control over our lives,[7] the perfectionism, questing for expertise, and competitiveness of aspiring lawyers also often is accompanied by a peculiarly strong desire to control outcomes.[8] Thus, one allure of trial work can be the unarticulated belief that if young lawyers achieve mastery over chaos and conflict in the courtroom, everything else in life and career will fall into place.

Don't get me wrong. Every trial lawyer knows the thrill of the puppeteer when all is going well. But ultimately in the courtroom (and in life), unexpected curve balls eventually up-end all our carefully laid plans. Mindfulness theory teaches us that we are loathe to give up the fantasy of control and that we should never underestimate our desire to flee what makes us feel uncomfortable and out of control. Thus, in the courtroom when things fall apart, students "flee" in certain typical ways, such as freezing up, checking out/giving up or getting angry and frustrated. Underneath these surface reactions, however, what is really happening is that the student is struggling to acknowledge and be present with the unpleasant recognition that control has been lost.

In seeking to avoid situations where we might lose control, we endlessly scheme and strategize. However, mindfulness theory teaches us that, not only is this a hopeless goal, but that many of our efforts to eliminate future suffering (i.e., loss of control) tend to bring more suffering.[9] Nevertheless, in

6. In the most general terms, my understanding of "mindfulness" is drawn from the Buddhist Vipassana tradition which teaches practitioners to learn to remain in the moment with whatever is happening. When cultivated skillfully, this path builds qualities such as equanimity and compassion for others as one learns to let go of thought patterns that separate oneself from others and from the present moment. The first few reading assignments for the course include articles on the law and mindfulness movement and excerpts from books by well-known American insight meditation teachers such as Jack Kornfield, Tara Brach and Steven Hagen. Students were required to keep a weekly journal about their experiences with the mindfulness practices and were debriefed after each mindfulness practice in class.

7. *See* Steven Hagen, Buddhism Plain and Simple 51 (Broadway Books 1998) (Buddhism "doesn't ask us to give up control. Instead, it acknowledges that we never had it in the first place. When we can see this, the desire to control naturally begins to wane.").

8. *See* Susan Daicoff, Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism, 46 Am. U. L. Rev. 1337, 1349 (1997) ("Individuals who choose to enter law school appear to have various distinguishing characteristics as children and college students. They are highly focused on academics, have greater needs for dominance, leadership, and attention, and prefer initiating activity.").

9. *See* Hagen, *supra* note 7, at 30-31 ("[W]e magnify our problem by longing (and trying) to stop that change, to fix things in their places. We attempt this externally through force, control, and manipulation....So long as we remain in our ordinary state of mind, there's no escape from the inevitable [suffering] brought about by change....[W]e generally try to control and manipulate the world: our lives, our relationships, events, other people. This attempt is the single greatest source of the second type of [suffering]. Until we see that this is so, our highest priority will still be to get in there and control and manipulate.") Thus, Hagen

trial work, many students believe that preparation and then more preparation will insulate them from the experience of things falling apart.

Preparation, of course, is a good thing, and in general, the more preparation, the more likely it is that we will have a smooth experience in the courtroom. The cognitive fallacy that can trip up students is that preparation will always guarantee control. Thus, when things fall apart, some students still cling to their preparation, resulting in increasing distance between them and what is actually happening in the courtroom. Certainly, all trial advocacy teachers have seen the student on autopilot, so wedded to his notes that he is not listening to the witness's answers or doggedly cross-examining on a point that the witness simply will not concede. Clearly, a trial is not a play in which the lawyer is both playwright and director and where witnesses can be counted on to predictably recite their lines. Thus, I have come to see that part of preparing students to deal with simulation "train wrecks" is to teach them to stay present, no matter how difficult that may be or how different the current moment may be from what they had planned.[10]

B. Authenticity and the Trial Lawyer Persona

Law school is as much a socialization process as it is about skill and knowledge acquisition. While the socialization process in doctrinal classes can be opaque, in trial advocacy, students–and sometimes instructors–frequently have an ideal trial lawyer in mind before the course begins. Thus, in the first few simulations, I see some of the students donning trial lawyer personas very different from their everyday personalities.

Instructors can skillfully work with the trial lawyer persona issue in several ways. Initially, some professors explicitly instruct students on how to behave in the courtroom. Some model their conception of a positive trial lawyer persona, one who is a passionate but respectful advocate, organized, prepared and articulate. However, more work is usually necessary to address the persona issue. Student expectations sometimes have to be gently moderated because no one starts out as Atticus Finch. More difficult are students who attempt to emulate an overly confrontational ideal of the trial lawyer (often adopted from over-dramatized television and movie portrayals), who, in reality is likely to alienate jurors and judges.

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concludes that "in many cases our attempts to limit or avoid pain can actually increase our suffering." *Id.* at 29. *See also* Larry Rosenberg, Breath by Breath: The Liberating Practice of Insight Meditation 74 (Shambhala 1998) ("It isn't even that we shouldn't prefer to feel something that is pleasant, or run from something that is unpleasant. The problem is that we're enslaved to these tendencies; we expend endless energy running after and away from things.").

10. *See generally* Jack Kornfield, A Path With Heart: A Guide Through the Perils and Promises of Spiritual Life 27 (Bantam 1993) (urging readers to "connect to our bodies" and "our feelings...now, if we are to awaken, to live in the present demands an ongoing and unwavering commitment").

Nevertheless, after years of teaching trial advocacy, I believe that the impulse to don an alien persona in courtroom performances is indicative of a deeper issue that has to be addressed directly. The core of the problem is that many students experience significant anxiety when they do not feel that they have a credible trial persona.[11] Thus, while performance anxiety tends to dissipate over time, many "persona-less" performances even later in the semester have a quality of stiffness and artificiality that undermines their effectiveness.

One of the clues to the root cause of their unease is that when students talk about their cases outside the simulation setting, they seem to much more easily express their insights and passions. While nerves and a lack of experience account for much of this problem, once again, mindfulness concepts provide another way to think about the impulse to don a trial lawyer persona and how this interferes with the authenticity at the heart of a trial lawyer's ability to truly connect with witnesses and jurors.

Mindfulness notes how much we live in our heads.[12] As James Joyce wrote in *Dubliners*, the concept that "Mr. Duffy lived a little distance from his body," is true for many law students.[13] Without question, analytic types are attracted to the field and law school exaggerates the tendency to process everything intellectually.[14] Thus, when asked to communicate with jurors, law students often resemble disembodied talking heads who struggle with eye contact, natural body movements, and other important physical manifestations of person-to-person communication.

The analytic, competitive and isolating nature of law school[15] also tends to exacerbate another virulent Western mindset–negative self-judgment.[16] Mindfulness theory tells us that, left untamed, our minds are wild beasts that

11. *See* Jennifer Jones Barbour, Worse than death: Students' fear of public speaking and what you can do about it (Texas A&M Univ. Writing Center 2011), *available at* http://uwc.tamu.edu/?p=13287.

12. *See* Rosenberg, *supra* note 9, at 36–37 (When we learn to watch our minds we begin to "notice that the mind is one big yenta, talking about others, berating itself, pointing out how it used to be better, seeing how it might improve.").

13. James Joyce, Dubliners 108 (Forgotten Books 2008). *See also* Sean Alfano, Getting Into Our Minds, Apr. 9, 2006, *available at* http://www.cbsnews.com/stories/2006/04/09/sunday/main1483025.shtml (discussing use of this story in mindfulness training).

14. *See* Larry Richard, The Lawyer Types, ABA Journal, July 1993, at 77–78.

15. *See* Krieger, *supra* note 1, at 11–17 ("Law school seems to communicate to students that it is how you do, rather than who you are, that really matters." A "law-of-the-jungle" mentality is encouraged, and "the common culture of law school and law practice settings obscures the importance of decency–toward one's self as well as others–by overemphasizing competition, production, and accomplishment.").

16. *See* Kornfield, *supra* note 10, at 93 ("So many of us judge ourselves and others harshly....[F]or many people judgment is a main theme in their life, and a painful one....Their response to most situations is to see what's wrong with it, and in their spiritual practice the demon of judgment continues to be strong.").

eventually turn on themselves.[17] Thus, the constant stream of thoughts of many law students eventually leads to the conclusion that they are not good enough and eventually will be discovered.[18] In trial advocacy, this can manifest itself in the fear that they cannot think on their feet, that they lack sufficient insight or passion, that they are too nervous, etc.

The classroom experience adds yet another layer because they know they are being watched by their peers and that a critique by the instructor will follow. Even if the instructor is gentle and focuses on only praise (which is not always helpful), the students' inner critics are still strong. Moreover, they learn enough from watching others to decide when they have "failed." While compassionate teaching can assist most students to develop competent trial lawyering skills, these negative self-judgments still hold students back from letting go and being themselves in the courtroom. Thus, rather than experience the vulnerability of being themselves in the courtroom, it seems less scary to most students to don ready-made trial lawyer personas to take their place.

But donning a trial lawyer persona is yet another form of distancing oneself from the experience of the present moment, and again, it can backfire in blatant or subtle ways. For the most self-critical students, who believe that their attempts to live up to an idealized version of the trial lawyer have failed, negative self-judgment leads to panic, brain freeze and simulation breakdown. In contrast, the students who over-identify with their preferred persona frequently come across as insincere, abrasive or arrogant, and therefore, neither believable nor likeable.

Ultimately, with guidance most students can find a trial persona to armor themselves well enough to proceed competently in the courtroom. However, this disguise often comes at the cost of subtly leaving out what is interesting, compelling and compassionate about each student.

III. Integrating Mindfulness Practices into Trial Advocacy

We began each class session with a mindfulness practice like yoga and meditation to manage the stress and anxiety that public performance in a trial setting produces.[19] In addition, I tried to match mindfulness practices to the

17. *See* Hagen, *supra* note 7, at 107 (Disturbed thinking "tends to augment itself and go faster and louder. The more you try to control it, the more it will gain strength. Give your mind a lot of space and it quiets down; try to control, quiet, or constrict it, and it goes wild...Thoughts, feelings, and emotions...start to branch into other thoughts. That's what the mind does when it's not being attended to.").

18. *See* Tara Brach, Radical Acceptance: Embracing Your Life with the Heart of Buddha 5 (Bantam 2003).

19. Led by the author, fellow students, and mindfulness practitioners from the community, students were exposed to a variety of practices including simple breath counting and other concentration practices. We also did visualizations, a Christian "examination of consciousness" practice which involved working backwards through each day an hour at a time, specific meditations designed to cultivate equanimity, as well as practices described in the text targeted at specific trial lawyering challenges.

specific trial skill for the day and I tried to find ways to integrate these exercises into the simulations.

A. Staying in the Present Moment When "Things Fall Apart"

Like trial advocacy, mindfulness is best learned incrementally, starting with simpler, more accessible practices and building toward tackling our more troublesome thinking patterns and emotions. I began the process of teaching students to stay in the moment during direct examination.

Frequently, students are so wedded to their scripted questions that they fail to hear non-responsive or more inclusive answers. Thus, their next question requests either information the witness just gave or messes up the chronology of events. Traditionally, instructors deal with this by asking students to do their direct examination without notes or with a key fact outline, rather than written out questions.

In this course, I went a step further. I had students do a direct in one class and told them to redo the assignment and learn it really well for the next class. We began the next class with a mindfulness listening exercise. The listener was instructed to pay attention to the speaker's words as well as his or her internal reactions, such as agreeing, disagreeing, judging, empathizing, comparing, etc. Students were also instructed to notice when they "tuned out" and were paying more attention to their internal dialogue than the speaker's words. This exercise was designed to illuminate how difficult careful listening can be under the best of circumstances when there is just one speaker and one listener.

Then, without advance warning, I had some of the students redo their direct from the previous class–but blind-folded this time. After some initial protestations, the students admitted that they knew the facts well enough to try this exercise. The instruction to the student-lawyers was to fully hear the witness answer, listen and follow up when necessary and to relax into what is nothing more than a guided conversation.

We did something similar with cross examination. Students can be apprehensive about cross because it can feel like a hostile environment in which the witness is unwilling to cooperate and opposing counsel is obstructionist.[20] Students tend to be either too meek or too confrontational. To reduce this dynamic, I first used a variant of a NITA training exercise in which the student-attorney and the witness toss a tennis ball back and forth, but each person can only talk when they have the ball. The game of catch forces the student-attorney to listen to the answers and experience a "pause" in which their response can be composed, rather than being totally reactive or shutting down. This ball tossing exercise has the added benefit of taking some of the confrontation out of the exchange and making the cross examination about

20. *See* Larry Pozner & Roger J. Dodd, Cross Examination: Skills for Law Students 266–67 (LexisNexis 2009) ("The runaway witness ranks as one of the greatest fears of the cross-examiner, often attempting to insert facts, descriptions, and interpretations of his choosing... he is trying to paint a contrary picture of his choosing...the fear expands because the lawyer is battling to retain control of the cross-examination.").

the information needed, rather than a series of unpleasant internal reactions in the cross examiner's head about how the struggle with the opposing witness is going. In this context, I also tried to get the students to see cross examination as a kind of epistemological inquiry into what the witness knows and how he or she knows it, rather than a battle that someone has to win.

Once my students got more comfortable with both examination technique and meditation, I tried more advanced exercises intended to challenge the students to deal with the more difficult emotions of panic and anger that can arise in trial during cross examination.[21] In one class, I taught the students a short meditation on anger that encourages a broader perspective and a depersonalization of the emotion.[22] I had an attorney come in and frustrate a student with repeated objections (which, as judge, I sustained). When the student started getting visibly frustrated and angry, I rang a meditation bell[23] and instructed her to try the anger meditation before approaching the bench to argue about the rulings.[24] I used the meditation bell interruption technique for other exercises, such as when witnesses were instructed to forget facts or change their story. In these moments, I encouraged students to briefly meditate on the illusion of control before refreshing recollection or impeaching with prior inconsistent statements.

In one assignment late in the semester, we did a meditation on fear of the unknown.[25] I then introduced a surprise witness for the day's trial packet, which the class already knew well. A few students were asked to do an "exploratory" cross examination, while being aware that a surprise witness could either help or hurt them. Based on mindfulness teachings, I encouraged the students to feel the fear in their bodies, note it and try to see it as a physical sensation,

21. *See generally* Rosenberg, *supra* note 9, at 59–60 ("Emotions arise because you are not mindful of the feelings... We don't look closely at the feelings that stimulate our reactions; they elaborate themselves into moods, emotions, and a sense of self, which sometimes results in unskillful actions.").

22. *See* Laurie McLaughlin, Manage Anger Through Meditation, Suite 101, Mar. 26, 2007, *available at* http://www.suite101.com/content/manage-anger-through-meditation-a17313.

23. "The use of a meditation bell is said to have some psychological effects and if you use the meditation bell on a regular basis your brain will learn to associate the bell with a meditation session and will help your body to instinctively relax when the bell sounds." Petra Kovlinksy, Meditation Bell, *available at* http://www.project-meditation.org/a_ms1/meditation_bell.html.

24. After the simulation, I asked her how she felt as she got angry at the other attorney for objecting. The student first pointed out that she was angry with me, not the attorney, and that the few moments of meditation did little to calm her down. Nevertheless, the experience was one that class and the student understood to be "realistic" and they appreciated the opportunity to see this scenario develop in the safety of the classroom before having it happen to them in a real courtroom.

25. *See* Fear of the Unknown, Alunatunes's Weblog, Oct. 4, 2008, *available at* http://alunatunes.wordpress.com/2008/10/04/october-03-fear-of-the-unknown/. *See also* Sally Sommer, Meditation on the Unknown, Seeds of Unfolding, *available at* http://www.seedsofunfolding.org/issues/2_06/inspiration_1.htm (for a more traditional mantra practice on this topic).

rather than give in to catastrophic scenarios or negative self-judgment which might inhibit a successful exploratory cross examination. While not all of these mindfulness experiments appeared to have an immediate impact on every student, the course was about planting seeds. As most of us have experienced, learning to deal skillfully with anger, panic, and fear is a life-long process.

B. Preserving Authenticity

The roots of this experimental course were my experiences with an actress and certified yoga teacher that I brought in for several years to participate in the closing argument classes.[26] She repeatedly noted that law students came across as disembodied and passionless because they spoke almost exclusively from their heads, rather than use their bodies and their hearts to convey their message.

As an initial remedy, she offered simple breathing and seated yoga exercises to help them "find their breath." She also taught students the basic principles of posture–equal standing position, use of abdominal muscles when standing and speaking, consciously relaxing the shoulders and aligning the neck and spine. For many students, just a few minutes of attention to their physicality were enough to ground them and settle their nerves. Their performances tended to be calmer and more focused.

I also attempted to address "critique anticipation" head on. I gave them Pema Chödrön's short piece about negative self-judgment in which she uses the analogy of looking in the mirror, and no matter which way you turn, you see an ugly gorilla.[27] As in my traditional class, I talked to the students about having reasonable expectations as beginners and told them that errors were expected and were teaching tools. But, in the experimental class, I asked each student to meditate for just a minute on Pema's story before I gave them a critique. With that backdrop, I encouraged them to hear any internal negative generalizations about their ability as a learned pattern that they could let go. I even brought in a gorilla mask for them to wear during the critique (which, of course, they wouldn't do but they enjoyed watching me try it on).

While these two mindfulness techniques paid some dividends, I wanted to find a more potent way to access each student's authentic self–especially the emotional side. In other words, I wanted students to speak from their hearts–connect with their passions for their clients and their cases–while remaining sufficiently "lawyerly." I explained the trap of the lawyer persona and I tried to persuade them that in my experience, juries respond more favorably to a real person, however inexperienced or nervous, than to an artificial construct.[28]

26. Feel free to contact Michelle Silberman Hubbard to learn more about the application of yoga, acting, and Pilates in professional environments, at mshel26@aol.com.

27. *See* Chödrön, *supra* note 4, at 17.

28. Professor Steven Lubet argues that the key to success before juries is sincerity. He writes, "[i]ntegrity inspires trust, and, in trial work, trust leads to success....Lawyers who lack integrity almost inevitably reveal themselves in court." Lubet, *supra* note 5, at 26.

Here, a true story about a statue of Buddha in Thailand was relevant. There is a large clay Buddha in Thailand that, while not particularly beautiful, was revered because it had survived many years and much social turmoil. One day, a monk noticed a crack in the clay and looked more carefully with a flashlight and saw that under the clay, the statute was made of gold. It turned out to be the largest gold Buddha ever cast.[29]

I told the students that, like this statue, lawyers put on protective courtroom identities to shield themselves from the stresses of trial work such as conflict, intensity, and the chance of losing. In doing so, however, they cover up their best selves–the selves that were drawn to trial work by their passion for justice and their clients. I explained that by donning a lawyer persona they were covering up the parts of themselves that jurors could identify with, like, and admire.

Like the monk with the flashlight, I invited the students to connect with jurors more directly by considering the qualities in them that their families and friends cherish. I then invited them to bring those qualities to the podium with them. A few bravely attempted this on their next try. For the rest, my yoga/actress consultant and I experimented with the students to see if we could find a way to safely strip away at least parts of their chosen lawyer persona to reveal a more authentic self. To begin, we had each student do a closing argument before a mock jury. We then had them redo pieces of the argument in different ways to try to help them find their authentic selves. Sometimes, this was as subtle as adjusting their posture and stopping their nervous movement (generally pacing, swaying or some other physical tic). For others, it meant sitting down and talking about the case without notes and in a conversational tone until their personality and passion emerged. At that moment, we would have them stand up and talk to the jury or select one juror with whom they were friendly outside of class.

Using these techniques, we were able to find ways for many of the students to better relate with jurors. The mock jurors reported a greater connection with the speaker after our adjustments and most of the student-lawyers acknowledged that they felt more themselves in the courtroom once they stopped trying to personify their conception of how a trial lawyer should act and speak. When it worked, both audience and speaker could see and hear it. For those with greater fear of letting go of their lawyer persona, these experiments seemed to

29. *See* The Golden Buddha, *available at* http://successworks-usa.com/GoldenBuddha.html. The temple is located just north of Thailand's ancient capital of Sukotai. Buddhist teachers use this story to suggest that just as the statue was covered with plaster and clay to protect it from harm during periods of conflict and unrest, in a similar way, when humans encounter difficulty, we cover over our innate purity. We do this so much that we forget our essential nature. In fact, our tendency is to fixate on our armorings of fear, anger, judgment and shame. Both in our self-view, and the way we express ourselves, we operate from our protective covering. Mindfulness helps us to see through these layers of habitual armoring, so that we can rediscover the brightness and goodness of our original nature. Kornfield, *supra* note 10, at 11-12.

make them "worse," less confident and weaker speakers. However, our hope was that seeing others improve and blossom would give them the courage to explore being themselves more. And if they chose not to try, at least the choice would be conscious and purposeful, which after all, is a main goal of mindfulness practices.

IV. Conclusion

Without question, law school teaching has become more humane, practical, and experiential over the last thirty years. In doctrinal classes, the Socratic Method has softened and professors employ a variety of teaching methodologies ranging from problem-based learning to in-class collaborative learning exercises. Clinic educators have been leaders in integrating reflective learning.

Nevertheless, there are places within legal education that still cling to older methods and mindsets. While trial advocacy has a solid pedagogical model, some instructors still believe that a litigator cannot survive without a thick skin and sharp reflexes, and therefore, the classroom/courtroom should at least partly mirror the gladiator's arena in which those who choose this life will enter.[30]

In this article, I have tried to demonstrate that mindfulness techniques hold promise for maintaining rigor in trial skill acquisition while at the same time cultivating internal abilities that allow students to maintain their center in the storm and hold on to their authenticity. My belief is that trial lawyers who can demonstrate compassion, be open and be fully present are advocates to whom juries relate best. I encourage trial advocacy instructors to attend a lawyer's meditation retreat, and to try some of my techniques or their own experiments, with the goal of training trial lawyers who will be more resilient and humane and thus more effective.

30. While beyond the scope of this short piece, an interesting related Buddhist concept is that of the "bodhisattva warrior." Bodhisattva warriors seek to shed their outward shell of protection and learn to be open to all the pain and wounds of the world and to breathe out compassion to all beings who are suffering. While I am not suggesting this model for the trial lawyer in all iterations, the basic concept that a more compassionate person will also be a better trial lawyer is central to my thesis.