

Advanced Trial Advocacy: Integrating Mindfulness Theory & Practice
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Syllabus

Introduction to the Course

In this course, we will first focus on developing students basic trial skills in direct and cross examination techniques and organization and delivery of openings and closings. We will then move to several topics not necessarily covered in basic trial advocacy such as voir dire, experts witnesses, and advanced cross examination techniques, objections, and motions *in limine*. Most classes will involve student simulations in a courtroom environment.

Unlike other trial advocacy classes, this course will also attempt to integrate the emerging field of “mindfulness” into the course. Drawing from mindfulness practices found in Buddhism and other religious and secular traditions, we will study and practice techniques for remaining “in the moment” in stressful circumstances, learning new approaches to understanding conflict and dealing with strong emotions, and extending compassion and understanding to witnesses and clients. The goal of these practices and the course is to develop trial lawyers who are both good at what they do and good to themselves so that they can have longer and more satisfying careers in the courtroom.

Students need no prior experience with mindfulness practices but must be willing to participate in exercises led by outside mindfulness teachers, the professor, and by fellow students. We will also use additional materials such as literature to promote the goals of the class and to create a reflective yet fun atmosphere. Students must come to the course with a willingness to experiment. The development of this class has been funded by a grant from the Center for Contemplative Mind in Society (CCMS) and my goal is to work collaboratively with my non-lawyer experts and the students in the class to create a model for integrating mindfulness practices into law school skills courses. To learn more about the CCMS, visit the website for the organization at <http://www.contemplativemind.org/about/>. Basic trial advocacy is a prerequisite but may be waived with the permission of the instructor.

Class Organization & Assignment

The trial advocacy portion of the class is patterned on the National Institute of Trial Lawyers (“NITA”) method of trial advocacy training. The NITA method emphasizes that students can only absorb a critique that encompasses one or two of their errors at a time. Any more results in overload and discouragement. Thus, to get the most out of this course, students must pay attention to every student performance, not just their own. The critiques of other students will raise errors you have or might make but which will not be pointed out to you. Students will also be called upon to critique other student performances as the semester proceeds. NITA also stresses a building block approach where students learn one skill at time, starting with the most basic techniques. For most classes during the semester, the majority of students will be seated in the jury box or at counsel table. Students are expected to stay “in role” as attorneys, witnesses, jurors, or spectators throughout the exercises and wait until the critique session to ask questions.

Grading

During the last two weeks of the course, each student will participate as co-counsel in a full-length simulated civil or criminal trial. The presiding judge will be either a sitting Rhode Island state or federal judge. At times, students will be required to turn in the materials prepared for the in-class assignments, to rewrite an assignment based on the critique in class, or to meet with me during office hours to go over an assignment. These written materials will be included in your grade.

In class student performances and class participation will count for 40% and the final trials will count for 60%. Students who have taken basic trial advocacy will be evaluated on a different scale than those new to the course. In addition, students will be evaluated on their ability to work collaboratively with those of differing skill levels. On the mindfulness component, students will be evaluated only on their willingness to try new things and class participation and discussion. No one will be graded on how “good” they are at mindfulness practices or for adopting any set of beliefs.

Dress & Attendance Policy

Dress requirements exist in all federal and state courts. In order to effect some realism in our trial practice course, students are required to dress in appropriate courtroom attire, which includes coats and ties for men and professional clothing for women for every class in which they are assigned an attorney role, including the first class. You are expected to attend every session of the class. If you are ill or have a family emergency, because class roles are preassigned, you must notify me by telephone in advance if you are unable to attend so that adjustments to the schedule can be made.

Assigned Texts

*Lubet, *Modern Trial Advocacy*, 3rd ed. (or similar text).
Snow Falling on Cedars, David Guterson (any edition).

Mock Trial Requirements

Each student will be required to serve as co-counsel in one trial and will be required to attend another in a support role. Counsel will provide their own witnesses for their trials. The trials will be held on the weekends and evenings during the last two weeks of the semester. The schedule and trial assignments will be determined with student input but I will determine your trial partner. Each student must also bring one person to serve as a juror for a trial other than their own. Individuals from outside the school (relatives, friends, etc.) tend to make more realistic jurors and are preferable. If you anticipate asking a law student to serve as your juror, obtain a commitment at the beginning of the semester because the mock trials come very close to exams. No student in this section may serve as a juror in this class. Unless excused in advance, students who do not bring a juror will be penalized on their final

Assignment Table

1	<p>Opening Statements: Finding the Story in Your Case Mindfulness Practice: Finding your Feet, Your Breathe & Your Posture. Guest: Michelle Silberman Hubbard, M.F.A & certified yoga teacher. - Yoga & acting techniques to enhance public speaking. Student Exercises: Opening Statements from <i>The Cat in the Hat</i>, <i>The Three Little Pigs</i>, <i>Horton Hatches an Egg</i>, with suggestions from Ms. Hubbard.</p>	Assignment 1 & Handouts; Lubet, Ch. 1-2, skim Ch. 10.
2	<p>Intro to Direct Examination: Theory of the Case & Question Technique. Mindfulness Practice: Introduction to Vipassana Meditation. Student Exercises: Group exercises and individual direct exams.</p>	Assignment 2; Lubet, Ch. 4; Mindfulness Reading: Tara Brach, <i>Radical Acceptance</i> (excerpts).
3	<p>Intro to Cross Examination: Theory of the Case & Question Technique. Guest: Rebecca Foster, M.A. and certified yoga teacher. Mindfulness Practice: Balancing Effort & Ease: Using Yoga Poses to Understand the Challenge of Cross Examination. Student Exercises: Group exercises and individual direct exams.</p>	Assignment 3; Lubet, Ch. 5; Richard O'Connor, <i>Happy at Last</i> (excerpt).
4	<p>Direct, Cross, & Redirect Examination: Collaborative Learning. Mindfulness Practices: Meditating on Gratitude. Student Exercises: Partnered direct & cross exams.</p>	Assignment 4; Lubet, Ch. 7; "Gratitude" (handout); reaction papers.
5	<p>Direct & Cross Examination: Listening and Follow Up Student Exercises -Blindfolded Directs -Tennis Ball Cross Drill Mindfulness Practices: Being in the Moment - guided "in the moment" meditation from podcast - sensory focusing with candles</p>	Assignment 5 (redo of assignment 4 role plays); Steven Hagan, <i>Buddhism Plain and Simple</i> (excerpt); "In the Moment" meditations (two handouts).
6	<p>Direct & Cross Practice: Refreshing Recollection & Impeachment. Mindfulness Practice: Equanimity practice (mindfulness "time out" during during student exercises). Student Exercises: Individual direct exams (with special</p>	Assignment 6; Lubet, pp. 79-80, 156-57, 149-196; "Equanimity" reading (three handouts).

	witness instructions to forget or make mistakes).	
7	Direct & Cross: Dealing with Objections I Guest: John Grasso, Esq. Student Exercises: Individual crosses with direct and objections by guest attorney. Mindfulness Practice: Dealing with Anger when it Arises (mindfulness “time out” during student exercises).	Assignment 7; “Anger” meditations (handout).
8	Direct & Cross: Exhibits & Diagram Foundations Mindfulness Technique: Dealing with Tedium (drawing exercise). Student Exercises: Individual directs & crosses with exhibits and diagrams.	Assignment 8; Lubet, Ch.10, “Tedium” handout.
9	Direct & Cross Examination: Impeachment with Prior Convictions & Character Evidence Mindfulness Practice: student led practice “the Rules for Being Human.” Student Exercises: directs & crosses with impeachment evidence.	Assignment 9; Impeachment Handout; (handout in class).
10	Expert Witnesses: Foundations & Teaching the Jury Your Theory of the Case Guest: Kerry Egan, M.Div. Mindfulness Practice: “Examination of Consciousness.” Student Exercises: directs & crosses with experts.	Assignment 10; Lubet, Ch. 8; “Examination of Consciousness” handout.
11	Direct & Cross Examination: Objections II Mindfulness Practice: Working with Mantra Meditation. Student Exercises: Objection Vignettes.	Assignment 11; Lubet, Ch. 9; Meditation “mantras” (handout).
12	Direct & Cross Examination: Putting It All Together. Mindfulness Practice: Embarrassment. Student Exercises: direct & cross examinations (with special instructions to witnesses to forget and make mistakes).	Assignment 12; “Embarrassment” (handout).
13	Mini-Trial: Two Hour Trial Exercise Mindfulness Exercise: Conscious Eating. Student Exercise: mini-trial in teams.	Assignment 13, “Conscious Eating” handout.
14	Connecting with Clients & Witnesses: Using Law & Literature. Guest: Nancy Geary, J.D. Class Discussion of <i>Snow Falling on Cedars</i> .	Assignment 14; David Guttererson, <i>Snow Falling on Cedars</i> ; Abbe Smith, <i>Defending Defending</i> (excerpt).

15	<p>Exploratory & Confrontational Cross Examination. Mindfulness Practice: Meditation on “Fear of the Unknown.” Student Exercises: direct & crosses with surprise witnesses.</p>	Assignment 15; “Fear of the Unknown” (handout).
16	<p>Jury Selection I: Ingratiation Mindfulness Practice: Reflecting on Decision Making. Student Exercises: mock jury selection using trial packets.</p>	Assignment 16; Lubet, Ch. 14, Jury Selection material (handout), Decision Making meditation (handout).
17	<p>Jury Selection II: Elimination & Indoctrination. Student Exercises: mock jury selection using trial packets. Mindfulness Practice: student led practice TBA</p>	(handout in class)
18	<p>Opening Statement: Reprise Guest: Amy Edwards, J.D., L.I.C.S.W. Mindfulness Practice: - opening meditation led by Ms. Edwards - hypnosis for public speaking Student Exercises: Opening Statements for the opposite side</p>	Assignment 18; Lubet, Ch. 12.
19	<p>Deepening Our Understanding of Mindfulness Theory & Practice Guest: Lakshyan Schanzer, Psy.D. Mindfulness Practice: - “wakeful” and “mindful” states of consciousness - “anchoring” techniques - partner mindfulness exercises</p>	Body/Mind Center materials (handout).
20	<p>Connecting with Witnesses & Jurors Guest: Lakshyan Schanzer Mindfulness Practice: - “entrainment” training - “mirroring”</p>	Body/Mind Center materials (handout).
21	<p>Closing Argument: Melding Logic & Persuasion Mindfulness Practice: Meditation on Accepting Change Student Exercises: Closing Argument from trial packets</p>	Assignment 21; Lubet, Ch. 13; Meditation on “Change” (handout).
22	<p>The Limits of Mindfulness & Trial Advocacy Mindfulness Exercise: Reflecting on Limitations Guests: John Grasso, Esq. & Michelle Alves, Esq. Demonstration: Direct & Cross of Rape Victim with Consent Defense</p>	Lubet, Ch. 1, Ch. 3, Prince Arjuna’s Dilemma (handout).

