



CHAPTER 2

Lawyering as a Spiritual Path

The Importance of Balance and Reflection

Elizabeth Bader

Editor's Note: This book would not be complete without Elizabeth's Yoda/Buddha voice. I have personally experienced her joyous wisdom over many years and am honored to call her a friend. We met in the early 1990s as part of California's "holistic" law exploration. Her chapter reminds me of a story from a psychologist friend, Jacob Herring, who did extensive work with lawyers and law firms. Jacob said that many lawyers had reflective practices of some kind but never shared that they did because they feared being labeled "weak." The opposite is true. It takes strength and discipline to cultivate a useful reflective practice. Elizabeth explains that because law practice inevitably raises profound questions about our values and who we are, it is essentially a spiritual path, one that requires the development of the capacity for balance and reflection.

Lawyers routinely deal with human greed, ego, and selfishness, including, perhaps most importantly, their own. To deal with this, we need a life that includes both balance and reflection. Balance helps maintain a positive connection to life and to others. Meditation and reflective inquiry help us stay in touch with our sense of truth and who we really are. Rethinking our relationship to ambition is also necessary so we can find the role within the legal profession that is best suited to who we are. These and other points are discussed in this chapter.

Elizabeth Bader's career as a lawyer, mediator, and conflict resolution coach spans 30 years. She has also been a committed reflective practitioner for 40 years. Elizabeth has developed a unique approach to mediation based on her insight that "ego" or "face" issues are often the key psychological issues that create conflict and impede settlement. Her award-winning publications, which integrate law, psychology, neurobiology, and spirituality, have won her high praise within the legal and psychology professions, both here and abroad. Prior to becoming a mediator, Elizabeth was an appellate litigator who successfully argued cases before the California Supreme Court and the Ninth Circuit. To connect with Elizabeth and to learn more about her practice, please go to her website (<http://www.elizabethbader.com/>).

Many years ago, I represented a man with multiple sclerosis in a disability-related case against a public entity. Even with his faltering voice and body, this man emanated dignity, strength, and kindness. When I lost his case, I laid my head down on my desk and cried.

In a classic example of overconfidence,¹ I had not anticipated the loss. My tears were the result of having my hopes for him—and, implicitly, myself—shattered.

In retrospect, I see this case as an early inkling that in the course of my career, I would confront human suffering, evil, and many other difficult facets of life. It would sometimes be quite painful.

In this chapter, I share some of my thoughts on this challenge and how to deal with it.

WORKING WITH HUMAN NATURE: A LAWYER'S DIFFICULT TASK

It is well known that many lawyers are unhappy. Many drink. Many kill themselves.²

It is certainly true that each individual's psychological problems contribute to these tragic statistics. However, the crisis in the profession also arises out of a spiritual problem—one that relates directly to what we do as lawyers.

By “spiritual problem” I mean (1) a fundamental human dilemma, (2) that cannot be resolved solely by psychological means (3) but may be worked through or transcended through spiritual or reflective practices, perhaps in conjunction with psychological strategies.

THE CRISIS IN THE PROFESSION AS A SPIRITUAL CRISIS

Just as some in the medical profession have begun to question why their profession has historically avoided questions related to physicians' encounters with death,³ *it is time for the legal profession to recognize that lawyering calls into question our relationship to suffering, to each other, to life.*

Like physicians who must deal with illness and death every day, lawyers routinely deal with human greed, ego, and selfishness. Then, there is our own selfishness and our own egotism—perhaps the most painful parts of this dilemma. When a lawyer continually strives to “win” while others lose, human goodness and human connectedness can fade into oblivion. A person may gain the world but lose his soul.

1. I have spoken and written extensively on overconfidence, and other issues of “face,” self-esteem and self-identity in conflict resolution. For example, see “The Psychology of Mediation: Issues of Self and Identity and the IDR Cycle,” 10(2) PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL 183 (2010), and “The Psychology and Neurobiology of Mediation,” 17(2) CARDOZO JOURNAL OF CONFLICT RESOLUTION 363 (2016). For a full list of publications, see <http://www.elizabethbader.com/publications-list/>.

2. See Rosa Flores & Rose Marie Arce, *Why are lawyers killing themselves?* CNN (2014), <https://www.cnn.com/2014/01/19/us/lawyer-suicides/index.html>.

3. See Altul Gawande, *What Doctors Don't Learn About Death and Dying*, IDEAS.TED.COM (2015), <http://ideas.ted.com/death-and-the-missing-piece-of-medical-school/>.

A LIFE OF BALANCE?

The crucial issue becomes, then, how to maintain one's positive and vital connection to life and to others while serving in a role where one must consistently deal with the worst in human nature and, sometimes, in oneself.

As sages throughout the ages have counseled us, the answer is to seek a life where the positive parts of life continually renew and refresh us. *Balance* is not only necessary for mental health, as many have argued, but also for a life that honestly confronts but is not destroyed by spiritual challenges.

STUCK ON "ON"?

Unfortunately, balance is impossible unless we re-evaluate some of the goals and values widely shared by those in the profession. This is because there is actually a physiological limit to our capacity to shift on demand into relaxation when our real goal is to "win," to be "the best," or to "succeed."

Lawyering and competition arouse the sympathetic nervous system, the part of the nervous system that governs fight and flight and self-protective responses. If the nervous system is stimulated continually over a long period of time, we become more or less permanently stuck in a state of arousal and stress. We become "stuck on ON," as some experts have put it.

Stated in spiritual terms, the notion that with more and more effort, we will become the "best" or the "winner" in life's contests is an illusion. If we become "stuck on ON," it is difficult to engage in balanced, strategic thinking and action—the only kind that is truly effective. More importantly, it also leads to a life of unhappiness.

THE IMPORTANCE OF SPIRITUAL AND REFLECTIVE PRACTICES

The inner strength to remain balanced in the midst of conflict requires the inner power to act according to our sense of truth regardless of external pressures.

This inner power is what the ancient Chinese called *te*, a word which means both virtue and power. Our *te* will not be there when we need it unless we have cultivated it advance. For this, an ongoing, committed, reflective, and spiritual practice is necessary.

MEDITATION

The sublime practice of meditation can bring balance by focusing us on the present moment in a compassionate, nonjudgmental way. It also brings balance by soothing nervous system arousal. However, there are some caveats.

First, for some people, especially those who have experienced trauma, meditation may result in serious impairment or even breakdown. The work of Willoughby Britton at Brown University is beginning to bring this problem to light with regard

to mindfulness meditation.⁴ This issue has also been recognized by some leaders in the meditation and mindfulness community.

Also, in our secular society, there is a tendency to divorce mindfulness meditation from its roots as a spiritual practice. It then becomes McM mindfulness, merely a therapeutic self-help technique. Self-help techniques may, of course, be useful. But if we use them to avoid deeper issues, in the long run they are counterproductive.

When one returns mindfulness and other types of meditation to their ancient, deeper roots, one comes again to the importance of being present, but also the importance of knowing oneself and acting with integrity in the midst of life.

REFLECTIVE INQUIRY

A very useful practice that can be done while we are functioning in the world is what I call *reflective inquiry*. In this practice, we engage in an open-minded inquiry into what is happening in the present moment without judgment. This is a form of meditation within the midst of life.

Example: A defendant in a high-stakes, multi-party case I was mediating became furious with me after receiving the opening offer. He blamed me for what he saw as defects in the offer.

Remaining calm externally, I asked myself: *What is happening here?*

The answer came in a flash. His anger was not about the offer, it was about *him*. He was concerned about a potential loss of face in front of the other defendants.

Acting on this insight, I took him through the nuts and bolts of the offer while showing him great respect in front of all. It turned out the offer was acceptable to him after all. We moved on.

For me, this moment was life-changing. It showed me the power of issues of ego, self-esteem, and self-identity in mediation, which formed the basis for my later work in mediation and elsewhere. It changed how I related to other people in my life as well.

RETHINKING AMBITION

Do not be a corpse of fame.

—Chuang-Tzu⁵

While reflective inquiry is a moment-by-moment practice, it is also important to examine, on a larger scale, why we want to achieve what we set out to achieve and what price we are willing to pay—or to exact from others. In other words, we need to think critically about our own ambitions.

4. On Willoughby Britton's work, Tomas Rocha, *The Dark Knight of the Soul*, THE ATLANTIC (2014), <http://www.theatlantic.com/health/archive/2014/06/the-dark-knight-of-the-souls/372766/>.

5. See the translation in Robert Santee, *The Zhuangzi, A Holistic Approach to Healthcare and Well Being*, in LIVIA KOHN, *LIVING AUTHENTICALLY: DAOIST CONTRIBUTIONS TO MODERN PSYCHOLOGY* (2011).

Here, it is important to modestly but objectively assess our own strengths and vulnerabilities. One way to do this is to use one's law practice as a mirror. We can ask ourselves: "Which parts of my law practice do I honestly enjoy, or at least find meaningful and fulfilling and worth the expenditure of my time and effort?" A corollary inquiry would be: "Which parts of my practice do I find most stressful and difficult?"

It is important to suspend self-judgment during this inquiry. Getting wrapped up in who we think we "should" be will make it more difficult to be objective.

One important indicator is our sleep patterns. For example, *insomnia* suggests that one's system is too delicate or too stressed to recuperate from each day's practice of law. It is important to heed, not override, the warning and perhaps make changes to how one practices law.

When change is necessary, often we must endure a significant period of what William Bridges calls a "neutral zone" — a period when we do not know what to do to come to our "new beginning." If we are able to tolerate this "not knowing," ultimately, we may end up in a place that is closer to our hearts. Meditation and reflective inquiry are key practices that help us to develop the capacity to tolerate this kind of ambiguity.

COMMUNITY AND CONNECTION

Legal skills, while important, are rarely if ever enough to get us through the difficult challenges associated with practicing law. In large part, it is our relationships with others that see us through and make it worthwhile.

On a functional level, sympathetic nervous system arousal can be modulated by the part of the nervous system that is engaged when we relate to others in a socially positive manner. In other words, connecting with others has a powerful balancing effect.

Staying connected and valuing one's personal relationships is thus a key to balance. Finding a community that is nourishing can also help counteract the sense of isolation we may feel as lawyers engaged in lives of competition.

However, here as elsewhere, it is important to engage in a balanced way. For example, it is important to avoid excessive idealism about any group, no matter how welcoming it appears to be. Otherwise, we simply fall into another form of overconfident, unrealistic, even "cult-like" thinking.

CONCLUSION

When I broke the news to my client that we had lost his case, he was gracious.

Here was another lesson. I had imagined myself doing something for *him*. Yet it was he who bestowed the final gift on me.

In later years, as I have gone through ups and downs in my practice as a lawyer, mediator, and conflict coach, it has always been my commitment to reflective practice that has seen me through difficulties and allowed me to be of most service to others.

Unfortunately, when I started out on the path of lawyering, there was little to no recognition of the spiritual or existential difficulties inherent in the practice of law or of the importance of self-reflection. As a result, I had to learn many lessons through the time-consuming process of trial and error.

Now it is time for lawyers and the legal profession to recognize the need to address these issues early on in lawyers' careers as part of our ongoing dialogue about lawyer wellness and effectiveness.