

PRAISE FOR *THE ZEN LAWYER*

“Michael Leizerman has written a transformative book. In it, Leizerman combines his skill as a trial lawyer with the practice of mindfulness and Zen. The book has exceptional practical advice on trial advocacy. He shows us how to live a mindful life as a trial lawyer. This bears fruit in teaching us how we can enhance our lives as trial lawyers. To be a successful trial lawyer is more than a collection of techniques. He dispenses with the idea of a duality of selves, a professional self and a personal self. These two selves cannot be separate from one another. They must be an integrated and congruent whole. Leizerman shows us that we choose whether we will be a successful trial lawyer by how we live our lives. Finding meaning in our lives transforms us as trial lawyers. The book is an invitation to reflect on what it means to be a successful trial lawyer and person. Every trial lawyer should read this book. If you care about your potential as a trial lawyer, buy this book.”

—David Wenner, coauthor of *Winning Case Preparation* and listed in *Super Lawyers* since 2007

“Do you want to be a great lawyer? Then read this book. It is not possible to be a great courtroom lawyer unless you are a mindful lawyer. A mindful lawyer means that you are totally in the present without judging what is happening. This book teaches you step-by-step how to reach these levels of mindfulness and thus become a much better lawyer. Not only will this book improve your courtroom performance, it will improve your relationships with your family, acquaintances, and coworkers. This book is unique because it is the only book designed for trial lawyers on how to become more mindful in their lives. I highly recommend it for every part of your life.”

—Lisa Blue, past president of the AAJ, has earned over \$350 million in verdicts for injured clients, and coauthor of *Preparing for Voir Dire* and *Conducting Voir Dire*

“Great trial lawyers are vessels of truth and explorers of personal experience. Michael Leizerman’s pioneering new book, *The Zen Lawyer*, guides us through our own personal journey of self-development, leading to great power in the courtroom and in life. It is a journey you must take and a book you must experience.”

—Tom Metier, obtained one of the highest personal injury verdicts in Colorado and faculty member at Gerry Spence’s Trial Lawyer’s College

“Michael Leizerman, one of the most gifted trial lawyers in the country, has written a revolutionary book that combines the best lessons of mindfulness with the newest and most effective approaches to trial advocacy. This book has the power to absolutely transform the way trial lawyers relate to clients, advocate to jurors, and make meaning out of their professional lives. Each chapter is packed with real-life practical examples that lawyers can start to use the day they begin reading. Every lawyer who reads this book will better understand his or her role as an advocate who has the capacity to bring about positive societal change through our jury system, one case at a time. This book deserves to become a classic on every trial lawyer’s desk.”

—Valerie Yarashus, past president of the Massachusetts Bar Association and Massachusetts Academy of Trial Lawyers

“Michael Leizerman is a master trial lawyer. In this book, he shares his life’s work (to date) on how to approach lawyering in a truly honest, compassionate, and mindful way. Yes, this will make you a better lawyer and a better human. Yes, this will make you win more often and with better results. Learning how to develop mindfulness and how being mindful of your senses, emotions, and surroundings leads to clarity and compelling persuasion. This is more than theory—it’s the secret sauce. If you want to take your game to a new level, read this book and practice what it preaches.”

—Joe Fried, founder of the Academy of Truck Accident Attorneys and faculty member at Gerry Spence’s Trial Lawyer’s College

“There are a lot of books for the advocate, but as far as I know, Michael has done something here which simply has not been done before: Zen and the art of trial advocacy. The practice of law as a spiritual practice. We all understand ‘up here’ (pointing to the head) that who you are, the person whom the jurors meet, the human being who opens the door for them to take an action meaningful to them, outweighs the words deployed, the ‘lawyering.’ I have watched as Michael over the years has undertaken the true study of the practice of law, through brilliant lawyering, yes, but beyond that, through the practice of meditation, the disciplines of Aikido, the training of the theater artist . . . the work on who he is, who he can be. He has walked the talk, and gives us his manual for what can allow the lawyer to use the practice of law to make a better world. It is a precious volume.”

—Joshua Karton, trial consultant and coauthor of *Theater for Trial*

“The Zen Lawyer workshop changed my life for the better. Instead of ‘trying a lawsuit,’ I have learned to create a shared experience in the courtroom and to trust the jurors to do justice. Not only have my verdicts gotten a lot bigger, but trial has turned from a time of stress to a joyful event. If you want to win trials while increasing the happiness in your life, buy this book.”

—Michael Cowen, trucking lawyer and host of the Trial Lawyer Nation podcast

“*The Zen Lawyer* brings the insights and disciplines of Zen into the courtroom. It gives us a powerful invitation into the complexities of honesty and compassion in the service of justice. This is a worthy read not only for the courtroom attorney, but for all of us seeking to balance our spiritual lives together with the mess of life itself. I highly recommend it.”

—James Ishmael Ford, author of *If You’re Lucky, Your Heart Will Break: Field Notes from a Zen Life* and *This Very Moment: A brief Introduction to Buddhism and Zen for Unitarian Universalists*, and coeditor of *The Book of Mu: Essential Writings on Zen’s Most Important Koan*

“Lawyers often tell jurors a trial is a ‘search for the truth,’ but they rarely actually include themselves among the searchers; they just want to tell jurors where to look for the truth. Michael Leizerman invites lawyers to expand and refine their daily practice to include their own search for five ‘core truths’ they can find and embody in their trial presentations. As he says, ‘With all the cores, you start with mindfulness of yourself, then apply it to the case.’ Sometimes arriving at a core truth means setting aside parts of cases one would otherwise fight over. Ultimately, with practice, Michael says the Zen Attorney can embody the integrity of each case’s core truths, creating a palpable, winning contrast with opposing advocates.”

—Eric Oliver, trial consultant of over twenty years’ experience and author of *Persuasive Communication: Twenty-Five Years of Teaching Lawyers and Facts Can’t Speak for Themselves*

THE ZEN LAWYER

Winning with Mindfulness

MICHAEL LEIZERMAN

with

JAY RINSEN WEIK



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To my clients past, present, and future.

—Michael Leizerman

*I would like to dedicate this book to all those lawyers
who act to help and protect people who need it, to
relieve suffering, and who manifest the spirit of truth in
the courtroom. Thank you for what you do!*

—Jay Rinsen Weik

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Rinsen, my coauthor, teacher, and dear friend, thank you for all you do to help reduce suffering and do good in the world. I enjoyed the many hours together writing and editing this book. And I'm glad it's finished. On to new projects . . .

—*Michael Leizerman*

I would like to acknowledge my transmitting teacher James Ford Roshi for his constant efforts in teaching Zen in general and his work in guiding me in particular, my Aikido teacher Bill Gleason for introducing me to true Budo, my parents Otto and Dee for teaching me the importance of being able to think and communicate clearly, and for my loving wife and daughter for their ongoing patience with me! I would also like to thank Joshua Karton for his fantastic teaching, and all the lawyers who I have had the opportunity to work with—you inspire me!

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—*Jay RinsenWeik*

Publisher's Note

This book is intended for practicing attorneys. It does not offer legal advice or take the place of consultation with an attorney who has appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment. Readers should also consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication of this book), and make independent decisions about whether and how to apply such information, ideas, and opinions for particular cases.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

All individual and business names that appear in illustrative examples have been fictionalized, and any resemblance between these fictional names and real persons is strictly coincidental and unintentional. Real names are used only in reported cases for which citations are given in the footnotes.

This book offers general information about the practice of meditation, Aikido, and other mental and physical disciplines. The reader is responsible for consulting with a physician or other appropriate health-care professional of his or her own choice to determine if the techniques described in this book are safe and appropriate for the reader.

The publisher disclaims any liability or responsibility for loss or damages resulting from the use of this book or the information, ideas, techniques, and opinions contained in this book.

To the Jury

There are so many books written for lawyers like me who depend on jurors like you to bring justice to our clients. But none of them, as far as I have read, address you, the jurors, directly. I wish to do so now.

There is an increasingly popular trick in which one lawyer will read an out-of-context excerpt from a book the opposing lawyer has written, or even just mention the book's title and suggest that it has some evil purpose that is not true. Any mention of this book during trial is unfair if it does not include its overall purpose, which I describe here. The book unfolds to describe how lawyers should spend their lives, including this trial that you are sitting through right now, to represent the truth. The book is broken down into five parts:

1. **Wisdom.** The most important part of being what the book calls a *Zen lawyer* or *truth warrior* is to work to fight for truth. This means that I need to be present at trial, listening to what's happening, and seeing the interrelatedness of what you told me during jury selection. I need to see what's going on in the world and what I can honestly do to help bring the case to life so you can clearly understand what happened, how it was avoidable, and the experience this family or person has gone through. The book is about trying to be a lawyer who works to be mindful and pay attention to others in an honest way, whether that helps or hurts the case, and not screaming my words at others without listening to, and considering, what they have to say. True wisdom is about having a commitment to reality and the truth no matter what. This book tells lawyers not to be afraid of the truth. You, the jurors, will understand that nobody's clients are perfect; that doesn't mean they deserved to get hurt.

2. **Compassion.** It is important that, as a lawyer, I do good in the world and act with compassion toward all people at trial. That includes acting compassionately toward you—the jury, the family or person who has brought the lawsuit, the judge, the court reporter, and even the people we are suing. It is important that lawyers fight for justice passionately while treating others with respect and dignity as human beings at the same time. This can also act as a model for your verdict, something that has the potential to do good in the world.

3. **Clear explanations.** It is easy as a lawyer to get caught up in technical lawyer language in a way that only a judge or another lawyer can understand. *Does the preponderance of the conspicuity expert's testimony meet the quantum of proof necessary to show proximate cause?* That sounds more like showing off to me than trying to be clear, or at least not remembering that most people don't speak the language of law. I hope I have followed my own advice and have spoken as simply and clearly as possible during this trial without being condescending.

4. **Emotional connections.** Sympathy may not be part of your decision as a matter of law. What can be part of your decision is to understand the pain the people I represent have gone through. I handle some of the largest cases in the country, and I'm very choosy about the cases I take. One of the criteria in whether I take a case is whether it has the potential to make a difference—whether or not your verdict can do some real good—for this family. This book encourages lawyers to find a way to show the connections between all of us and consider how irresponsible actions affect people beyond those directly hurt.

5. **Physical moments of the case.** So often in life, a person starts telling a story and I find myself lost. *Wait, who are you talking about? What happened? I can't follow all the details.* This book encourages all lawyers—and is a reminder to myself—to explore all the senses to help you, the jury, get to the truth of what happened. It's one thing for witnesses to describe what they think happened. It's even better to try to recreate for you in the courtroom the combination of what all the witnesses saw, heard, felt, and even smelled to give you a complete physical understanding of what happened.

I hope I have found a way to do this during trial so that you can do your job and decide based on all the truths in this case:

- ◆ The physical truth of what happened.
- ◆ The truth of the emotional connections affected or destroyed by what happened.
- ◆ The clear facts, standards, and laws that are part of the case.
- ◆ The motivational truth that your verdict has the ability to do good in the world.
- ◆ The truth that there are many ways in which we are all interconnected so that one person or company's actions affects us all.

So, if the other lawyer has suggested that this book is about anything other than what I just read to you, he or she is wrong. I believe so passionately in what this book is about—a deep commitment to truth and to compassion—in and outside the courtroom, that I don't mind if the other side mentions this book at trial. I hope they do, because, while I am not perfect, I am proud of being a lawyer and proud of this book. I pray that in this trial, and in all trials, I conduct myself humbly and with the purpose of working with you, the jury, to make the world a safer and better place.

INTRODUCTION

Go into the world and do well. But more importantly, go into the world and do good.

—Minor Myers Jr., *Liberty Without Anarchy*¹

For the first fifteen years of practicing law, I read everything I could about trial strategy. I worked with the top trial consultants. I got ridiculously wrapped up in studying cognitive neuroscience to try to figure out how to win cases. I did well as a lawyer. I lost some trials, but won most. I was getting good cases and making a good living.

Despite my successes, something wasn't quite right. I wondered how all the various strategies I learned fit together. Some even contradicted each other. I also thought a lot about what it means to be successful. Large money settlements and verdicts are a primary measure for plaintiffs' trial lawyers, but I felt there was something more.

In my personal life, as I got deeper into Zen practice—mindfulness and the moral precept of *do no harm*—I found it increasingly

¹ Minor Myers Jr., *Liberty Without Anarchy: A History of the Society of the Cincinnati* (Charlottesville: University of Virginia Press, 2004).

influencing the decisions I made in cases. This included everything from how I asked an expert to explain roadway tire marks to asking myself if taking a new case would reduce harm in the world or not. I also found that the best predictor of a large verdict was the extent to which I was truly *present* in the courtroom—engaging in the moment like I did when meditating.

I started having recorded conversations with Jay Rinsen Weik, the Zen Buddhist priest who taught me these skills, about applying Zen practice to lawyering. Some of those conversations are included in this book. I then invited Rinsen to work with Joshua Karton—by far the most influential trial consultant I’ve ever worked with—and me to teach these skills at workshops. This book is an attempt to reduce these teachings to writing and create a systematic approach to learning the skills necessary to become a Zen lawyer.

What Is a Zen Lawyer?

The goal of a Zen lawyer is to be awakened. To be *awakened* means to be loving, knowledgeable, compassionate, and wise while directly experiencing reality—the moment here and now. In the context of Zen practice, these words have a particular meaning. *Compassion* means aspiring to do good by reducing suffering in the world. *Wisdom* means seeing the interconnectedness of all things in life, including the case you are working on. As a Zen lawyer, you honor others and yourself.

The goal of Zen practice is to experience your life as it actually is. It is about developing an inquisitiveness about life. It is about preferring to be authentic rather than striving to be perfect. Zen lawyers have an honest presence that makes people feel safe, heard, and seen. They make the jury and others feel like there’s a real person on the other end of the conversation. In our current time and culture, you stand out if you are really present here and now. This is not about being a great entertainer. It is about being a lawyer who is awake and mindful.

What Is Mindfulness?

Zen roughly translates as *reality*. In Zen practice, you access this reality with the practice of *mindfulness*. Mindfulness is nonjudgmental awareness of what is going on inside and around you. This type of awareness can be difficult to sustain for any amount of time. Through Zen meditation techniques that have been handed down over thousands of years, you can build your mindfulness “muscles” so that you can place your mind where you want, when you want—a quality of mind called *joriki* in Japanese. Practicing mindfulness every day builds a habit so that mindfulness is there even in the heat of a trial. This mindfulness habit helps you concentrate your mind and place your attention where you want, when you want.

True concentration means your focus is nowhere and everywhere. It is unfiltered experience in which you flow with the currents of reality around you. In Zen, this state of being is called *samadhi*. You are not focusing on the next question or even the one cross-examination question that you think is going to clinch the case.

The workshops Joshua, Rinsen, and I put on have forced me to find ways to teach this to other lawyers in a systematic and easy-to-understand format. I break down Zen practice skills for lawyers into five categories, which I call *cores*. The five cores described in this book are specific areas you can develop on your path to becoming an awakened Zen person and lawyer practicing mindfulness.

What Are the Cores?

You increase the chance of success in your case and at trial when you are mindful of, and communicate with, the jury on all five levels:

1. Physical
2. Emotional
3. Logical
4. Motivational
5. Zen (being present in the moment)

Physical Core

The *physical core* is located throughout the body. When mindful of what you are sensing, you can develop your center so that, in the courtroom, you can embody case moments, such as what parties and witnesses perceived, so that jurors experience the physical truth of the case. This allows the jury to see, hear, touch, taste, and smell the physical aspects of the case. The physical core is covered in chapters 1 through 3.

Emotional Core

The *emotional core* is located in the heart. When mindful of your feelings, you can develop openness so that, at trial, you can explore case connections, including feelings shared by your clients, their family, and the jurors. This allows jurors to experience the emotional truth of the case by feeling the emotions in the case. The emotional core is covered in chapters 4 through 8.

Logical Core

The *logical core* is located in the brain. When mindful of what and how you are thinking, you can develop clarity so that, at trial, you can explain case knowledge, such as facts and standards. This allows the jury to clearly think about the logic of the case themselves and experience the logical truth of the case. The logical core is covered in chapters 9 through 13.

Motivational Core

The *motivational core* is located in the breath. When mindful of the meaning of your practice—ideally to reduce suffering in the world and do good—you can develop compassion so that, at trial, you can encourage jurors to take action in the case in a way which has the potential to do good. In doing so, you and the jurors are united in the motivational truth of the case, which is that the jury’s verdict gives meaning to the case. The motivational core is covered in chapters 14 through 18.

Zen Core

The *Zen core* is located in the mind. When mindful of your being, you can develop wisdom, which is the interconnectedness of all things—including case events, your life, life experiences of the jury, and what’s happening at trial—so you and the jurors experience the Zen truth of the case here and now in the present moment. This allows the jury to *be* the case by directly experiencing it as something not separate from themselves. The Zen core is covered in chapters 19 through 22.

The Five Cores

This book is organized by the five cores. Learning and exploring these cores allows you to be a Zen, or awakened, lawyer. That is the essence of this book. It is designed to help you practice mindfulness so that you can develop each of the core aspects in yourself and also help the jury realize truths in each of these core areas. When jurors have a direct experience of the reality of each core, versus simply adopting what you or the other lawyer say, they have realized *core truths*. When you create a truthful reality at trial comprised of all the cores, you may find that it is difficult to lose.

Below is a chart of the five cores and their different aspects, showing where in your body you experience these cores and working down to ultimately helping the jury experience the core truths in your case.

The Five Cores

| | Physical Core | Emotional Core | Logical Core | Motivational Core | Zen Core |
|--------------------------|--|---|--|---|-----------------------------------|
| Location | Body | Heart | Brain | Breath | Mind |
| Mindful of | Sensing | Feeling | Thinking | Meaning | Being |
| Develop | Center | Openness | Clarity | Compassion | Wisdom |
| In Court | Embody | Explore | Explain | Encourage | Engage |
| Case | Moments | Connections | Facts and standards | Action | Presence |
| Jurors Experience | Physical Truth: <i>See, hear, touch, taste, and smell the case.</i> | Emotional Truth: <i>Feel the case.</i> | Logical Truth: <i>Think the case.</i> | Motivational Truth: <i>Give meaning to the case.</i> | Zen Truth: <i>Be the case.</i> |

Looking at Cross Sections of the Cores

Reading horizontally across the rows in the chart gives an overview of your job in the case and how awareness across the cores works in your personal life, as you prepare the case and present it in the courtroom.

- ◆ **Location.** The cores can be found in your body, heart, brain, breath, and mind.
- ◆ **Mindful of.** It is ideal to be mindful of what you are sensing, feeling, thinking, meaning, and being.
- ◆ **Develop.** You can develop your center, openness, clarity, compassion, and wisdom through meditation and mindfulness practice.
- ◆ **In Court.** In the courtroom at trial, it is your job to embody physical moments, explore emotional connections, explain facts and standards, encourage action, and engage in the present moment.
- ◆ **Jurors Experience.** Ultimately, we want each juror to experience the physical, emotional, logical, motivational, and Zen core truths so that they return a verdict with integrity (integrating all the cores), a verdict that is correct, follows the law, and is based on knowledge, compassion, and wisdom.

This book will explore the concepts in the core chart, both the philosophy behind each and their practical applications. There are examples and exercises to help you become a better, more engaged and awake lawyer and human being. While the enhancements to your life outside the practice of law will be inevitable, it is the success it has brought to my law practice—*winning*—which has been undeniable.

The Importance of Core Truths

All the cores are important. You can prepare your case by looking at each and making sure you have addressed them all. As you move across the chart from left to right, you can explore their interplay with each other. The cores start with the concrete physical core and become increasingly conceptual as you move to the Zen core. Ultimately, you want to bring the jury to the truth of each core.

Core by core, this book will help you develop truths that you want the jury to experience. At the end of each core section, you will find a checklist of the cores to help you identify the physical, emotional, logical, motivational, and Zen truth of the case. Ultimately, you will be able to create a truth chart with a short truth for each core.

Zazen Is the Starting Point

The basic exercise for practicing mindfulness is *zazen* (pronounced *záh-zehn*), or seated Zen, which literally means *seated reality*. This is often translated in English as seated meditation. Another way of thinking of this is *seated mindfulness*.

Meditation can mean many things. Some people think of Transcendental Meditation[®], a practice in which you sit for twenty minutes each morning and evening, with your eyes closed, creating a state of transcendence by repeating a mantra. I have no experience with Transcendental Meditation. I have friends who have practiced it for years and love it. It may be great for relaxation and stress reduction, but it is something very different from *zazen*.

Zazen is practiced with the eyes open. It is about facing reality as it exists—here and now, without any sugarcoating and without

any negativity. Practicing zazen and experiencing each moment of your life fully—the moment happening *right now*—is useful when practicing law. In the middle of trial, if the police officer testifies that he was mistaken about his calculations and now believes your client was speeding and the crash was her fault, a repetitive closed-eye mantra is not helpful. You do not have the option of going back to counsel’s table and saying, “Your Honor, I’m really stressed out about that witness’s testimony. Can I just sit and relax for a few minutes with my eyes closed and repeat my mantra? Pleease?” Instead, you must meet the moment and instantly and directly respond.

Unfortunately, today the word *Zen* is often used in marketing to mean just about everything *but* direct experience of the moment. It is often mistakenly used to mean *relaxed*. People relaxing at the beach may think they’re in a “Zen state of mind.” And they may or may not be. People in the middle of an intense legal fight to vindicate somebody’s rights, however, may also be in a Zen state. This is possible when they are mindful of what’s going on, engaged in the moment, and motivated by compassion. That’s what this book is about.

Sitting Zazen and Counting Your Breaths

You will find a full zazen primer in the next chapter. Here is a short exercise to get you started. Start the process of mindful self-awareness by sitting comfortably and paying attention to your breath. Just breathe normally. Silently count one as you inhale, two as you exhale, three as you inhale . . . up to ten, then start over. The first time you do this, just try to get to ten, concentrating on your breath and nothing else.

Pay attention to the center of your body, which is just below your navel. Try counting to ten, one count on each inhalation and exhalation, again, this time, mindful of the center of your body. In Zen practice, your gut is the center, not your head. You may find it helpful to focus on the rise and fall of your belly while counting ten breaths. This can keep you focused on your breath and center at the same time.

Now, set a timer for five to ten minutes and practice mindfulness of your breath and body center.² This is a basic practice that we will expand on in later chapters.

Zen Is Nontheistic

Zen is nontheistic. I am not pushing any religious point of view about God or creation. The Zen process is one of becoming more aware of yourself and others, being centered, recognizing emotions as they occur, seeing reality clearly, and consciously interacting with the world. Zen is extremely practical. I know Catholic nuns, other Christians, Jews, agnostics, and atheists who practice Zen.

Zen has as much to do with religion as jogging does. You can jog with a sense of God, and you can jog with no sense of God. You can be any religion or no religion at all and jog. The same is true for developing an awareness of yourself and the world around you and striving to help others. You can relate all of this to a goodness or divinity, you can have no religious beliefs, and you can do everything in-between, and still practice mindfulness, presence, and helpfulness.

Throughout this book, we will at times refer to Rinsen as *Rinsen Sensei*. This is a nonreligious Japanese term that means *teacher*. It is common in Japan to refer to a person as *sensei* in any field in Japan, especially the martial arts.

² I use the iOS app Meditation Timer or Insight Timer.

Recap

- ◆ A Zen lawyer is a lawyer who is awake—compassionate and engaged in the moment.
- ◆ The five cores—physical, emotional, logical, motivational, and Zen—are areas in which you can work on mindfulness.
- ◆ You can develop a truth in each core area that the jury can experience to help maximize your chance of a successful verdict.

Notes from the Authors

As trial lawyers, we can simultaneously help our clients, act with compassion for all people in the courtroom, and leave the world a better place. We do this by bringing truth to the courtroom and by being the truth in the courtroom. Rinsen Sensei gave me my Zen Buddhist name *Hoshi*. It translates as *truth warrior*. Because many methods speak of lawyers as warriors, I've created an intentional distinction between being a courageous lawyer warrior and being a Zen lawyer. That difference involves practicing mindfulness and being motivated by compassion and a desire to do good in the world. To do this, you must develop your entire self—heart, clarity, good intentions, and wisdom.

Some lawyers may think, “I'd love to be a Zen lawyer and practice law as an art that is in harmony with my life, but I don't have that luxury. I don't even know where I'm getting the next rent payment.” I understand this concern. The Zen mindfulness I describe in this book is not only a good way to live your life, but it turns out that mindfulness can also add value to cases. Jurors respond to the presence, honesty, and desire to do good that is part of being a Zen lawyer with verdicts that recognize the suffering of your client and acknowledge it in a way that only a verdict can.

—*Michael Leizerman*

Being a lawyer is ideally a dignified profession and life path that honors humanity. A lawyer can be a warrior for the alleviation of suffering in the world in a very practical way that is not available to nonlawyers. You can succeed in many ways as a lawyer, but to really be a *Zen lawyer* is to be successful in a way that maintains your integrity, alleviates suffering, and elevates society, all while helping your client.

Zen is a practice that integrates mind and body. You can be very successful and achieve many wins in the courtroom and still lose the big fight, which is how your life is going in the bigger picture. What is your actual lived life like? Lawyering can be a path to self-perfection, to self-evolution, to living in harmony with the universe. It may be easier to imagine profound experiences and insight coming through gardening, music, art, or parenting, all of which is possible, but lawyering, too, can be a noble path.

In contrast, you could be a lawyer who wins often and yet still is an ass, leaving a trail of pain and suffering in your wake. This can be true in any profession or practice—doctors who fix a physical problem but cause those around them to suffer based on how they treat people, or a musician who may play beautifully but leaves the deeper end of the pool unexplored.

If part of your basic response to being alive is making music, or if it's lawyering, then the important question is what would it be like to take that basic response and use it to its highest value. And if you don't view lawyering as something you are compelled to do to help make the world a better place, it is worth contemplating why you became a lawyer and if you want to remain a lawyer. From a Zen point of view, your highest value is knowing yourself intimately, coming into harmony with the universe, and creating good for others.

—Jay Rinsen Weik

PART 1



SENSE
the case

The Physical Core

The Physical Core

Have you ever listened to a client describe an event and found yourself completely lost in their description?¹ Your client already knows the facts, so it seems like they are starting in the middle of a story. After listening, you aren't sure where the truck was coming from that hit them or what medical procedure they were undergoing or even if they're talking about something that happened to themselves or somebody else.

It is likewise common for a lawyer to begin the opening statement from what sounds like the middle of a story. This is due to a problem called *the curse of knowledge*, which happens when lawyers assume the jurors have the same background information they do.

Have you ever spoken with a jury after trial and found they were confused about a basic fact of what happened? Such confusion is more likely to happen when you describe an event using only words and maybe a couple photos. It is critical for a jury to fully understand what physically happened. You can assure their

¹ A note from the author on gendered grammar: In order to avoid gendered pronouns like he, him, and his, especially when referring generically to judges or lawyers, the author uses *they*, *them*, and *their*. I know this will freak out grammar snobs. It's okay. It's taken me years, but I now willingly dangle prepositions at the end of sentences for the sake of not sounding like I'm from the 16th century. I also split infinitives. I still refuse to use the word *snuck* (*sneaked* is proper), but I may even give in on that eventually. When possible, I will use plurals. *Judges should not pick their nose* instead of *a judge should not pick his nose*.

But sometimes the singular is unavoidable, such as: *When your client describes what happens, it may seem like he is starting in the middle of a story*. To avoid the gendered pronoun, I have chosen to write this as, *When your client describes what happens, it may seem like they are starting in the middle of the story*. "They" may seem out of place to some, but there is an increasing movement to use *they* as a singular pronoun to avoid sexist references. See, for example, Bryan Garner's suggestion in *The Winning Brief*, second edition, Oxford University Press, 2003, p. 269. Garner is the editor-in-chief of *Black's Law Dictionary* and numerous other legal writing books.

full understanding by physically immersing them in the case. That is the goal of getting to the physical core truth.

With all the cores, you start with mindfulness of yourself, then apply that mindfulness to the case. Next, you develop the particular core in yourself so you can bring it to the courtroom. In doing so, you can help the jury experience the truth of that core.

- ◆ Chapter 1 is an introduction to seated Zen meditation or *zazen*. The physical core starts with mindfulness of your senses. Learning this basic skill of seated meditation helps you become mindful of physical reality and helps you immerse the jury in it.
- ◆ Chapter 2 teaches you how to center yourself physically. This means becoming aware of your senses and center, so you can better communicate the physical sensations that are part of the case. Centering physically also helps you embody physical moments in the courtroom.
- ◆ Chapter 3 helps the jurors experience the physical core truth, so that they see, hear, touch, taste, and smell the case.

One of the important lessons of the physical core is *don't tell the jury the story of what happened, show them*.

1

BEGINNING MEDITATION

Meditation is the discovery that the point of life is always arrived at in the immediate moment.

—Alan Watts, *Om: Creative Meditations*¹

You've picked up this book, so you have at least some curiosity about mindfulness and meditation. But where do you start? Zazen is where you begin practicing mindfulness. You can return to this practice throughout all the cores and throughout all parts of your life. Zazen helps you develop the habit of mindfulness so that you are aware of the physical, emotional, logical, motivational, and living parts of your case. Let's start with basic physical zazen instruction.

This chapter includes practical advice that comes from a 2,600-year-old tradition of practicing meditation. Included here

¹ Alan Watts, *Om: Creative Meditations* (Berkeley: Celestial Arts, 1995).

are nuts-and-bolts techniques in the areas of posture, sitting comfortably, where to place your hands, and what to do with your breath and mind.

If sitting and watching your breath just doesn't interest you, consider at least giving it a try, along with other mindfulness activities throughout this book. Just sitting for a few minutes every morning is very useful in setting a helpful tone for the day. I like to meditate after showering—so that I am awake—but before I check my email. Many people like to meditate immediately upon waking and before showering. Do whatever works best for you.

If you sit *zazen* in the morning, you are much more likely to remember to be mindful of what you are doing throughout the rest of the day. Perhaps you're talking with a lawyer who ticks you off. When you make mindfulness a habit in your life, as you get anxious or angry about whatever's going on, you are more likely to remember to breathe and to be aware of your center, posture, thoughts, feelings, and what drives you. You may need to say something severe (or not) in response, but your mindfulness practice can help you remember to listen to what other lawyers are saying versus the story in your mind of what you think they are saying. You can then turn down the volume of your other chattering thoughts and honestly and directly engage in the moment. This all comes from putting the practice of *zazen* into action, so that your daily life becomes an expression of Zen.

The traditional and practical instruction on meditation that follows was handed down to me from Rinsen, who received this instruction from his teacher, and so on. It is practical advice about the best way to sit comfortably to help you be present in the moment. In the practice of *zazen*, there are three areas to keep track of—body, breath, and mind.

Finding the Right Posture for Your Body

How you position your body is important, but it does not have to be in a twisted yogi position that you may have seen. My personal zazen practice is the sitting technique described at the end of the next section, which is sitting on a chair. My body just doesn't work with the lotus position or any other position where you sit on the floor for any substantial length of time. That's not a problem. There is no mystically magic posture that you must adopt. The point is to be able to sit still and sit silently for an extended time without hurting your body.

It's important that you are comfortable when you sit. It is also helpful to be stable. Zen tradition holds that the ideal posture is seated on the ground with a cushion. You sit on the forward third of the cushion so your tush is elevated and both knees are on the floor. This provides a stable base. There are a couple ways to do this.

Full Lotus

The most stable posture is called the *full lotus*, where the top of the right foot is resting on the top of the left thigh and vice versa. The advantage to this posture is its symmetry.

Full Lotus Meditation



(Photographs by Andrew Weber Photography, modeling by Jennifer McCullough)

The full lotus posture is the Eastern ideal, and it is very difficult, often impossible, for most Westerners. If your body twists in this way, then certainly explore this posture.

Half Lotus

Most readers will be happy to know that you have other options. There is a posture called *half lotus*. In half lotus, you put one of your feet down while the other foot stays on top of the opposite side. When using an asymmetrical posture like this, it's important that you change which leg is on top every other time you sit. This avoids introducing a chronic asymmetry into your body structure.

Burmese

Another way of meditating is to put one leg lengthwise in front of you and the other in front of it. This is typically called *Burmese*, and it's a lot easier on the ankles and on the knees.

Burmese Meditation



(Photographs by Andrew Weber Photography, modeling by Jennifer McCullough)

Seiza

Another posture that many people find comfortable is called *seiza*, in which you place a cushion underneath your tush and kneel on both sides of it so that the cushion supports your kneeling position.

Seiza Meditation



(Photographs by Andrew Weber Photography, modeling by Jennifer McCullough)

Seiza Benches

Made in America, *seiza benches* also take the weight off the knees and ankles. They are comfortable, and many Americans find them helpful.

Seiza Bench Meditation

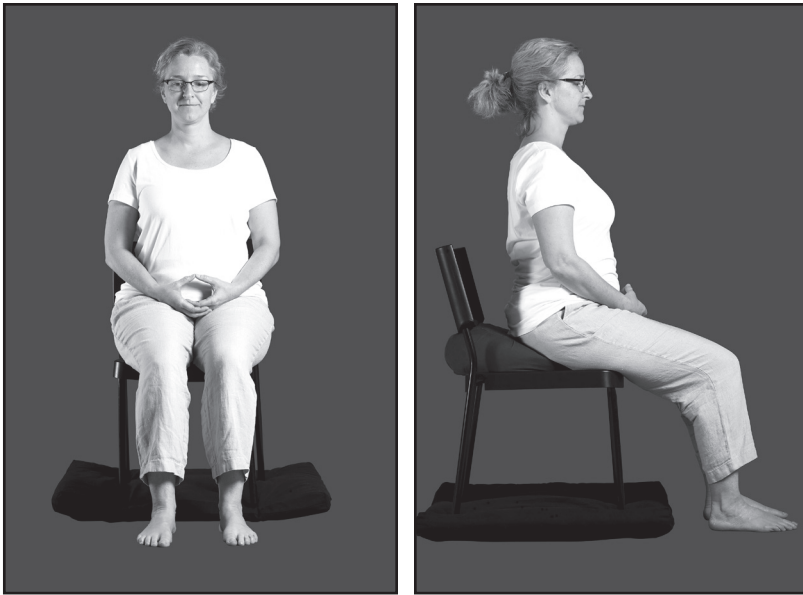


(Photographs by Andrew Weber Photography, modeling by Jennifer McCullough)

Seated Meditation

And still, some people are unable to use the Seiza posture or cross-legged posture. It is fine to practice seated Zen meditation in a chair. That's how I sit every day when I meditate. I have short, thick thighs and calves, and my legs just don't bend into the other positions without causing me a great deal of pain. There is nothing magical to sitting on the ground on a cushion, cross-legged, except that it's a stable position. When sitting in a chair, create a stable position by keeping both feet on the ground and your spine erect. It's best to use a cushion on the chair and sit on the forward third of the chair seat, with your weight leaning slightly forward.

Seated Meditation



(Photographs by Andrew Weber Photography, modeling by Jennifer McCullough)

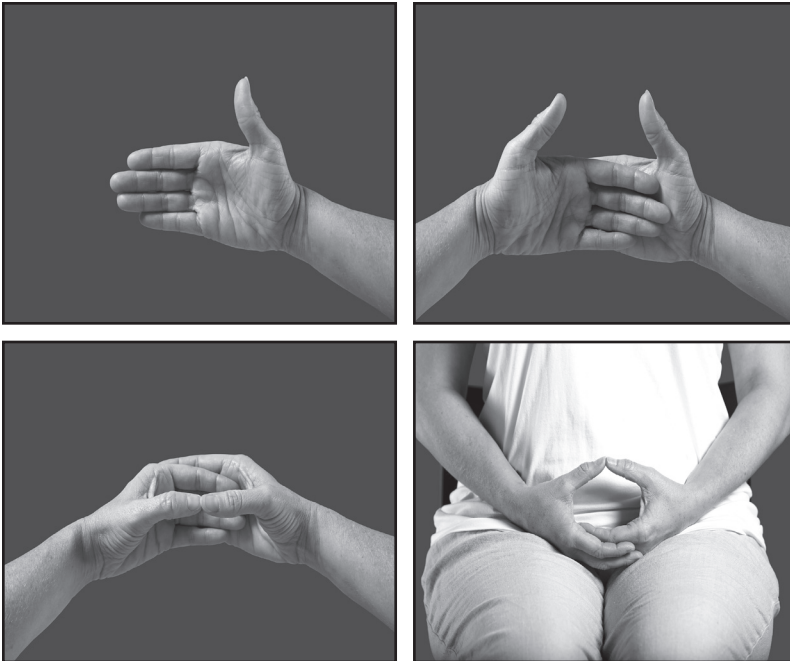
There are many other options depending on the abilities of your body. Rinsen has a slight scoliosis, so he compensates by moving the cushion underneath him to the side. People in wheelchairs find a comfortable way to sit in their chairs. People who are quadriplegic can lie in bed and do lying meditation, making whatever adjustments they need.

For people who are mobile, once you find a suitable posture for your legs, you can then work with the rest of your body. It's important that your nose is aligned with your belly button and your ears are in line with your shoulders. Do not lean forward or backward or to the sides, but rather be centered in the middle so the spine is erect.

Mudra for Hands

Hold your hands in what is called the *zazen mudra*. Mudra means *hand position*. The *zazen mudra* forms an oval with both your hands. This hand position helps you to be centered, as you'll learn in more detail in the next section. Your thumbs should be aligned above your middle fingers. If you're right-handed, the right hand goes on the bottom and the left hand is enfolded in it. You want to maintain the mudra so that your thumbs lightly connect to each other as though you were holding a piece of paper between them, which mirrors a mind that is focused but not tense.

Mudra Hand Position



(Photographs by Andrew Weber Photography, modeling by Jennifer McCullough)

Your mudra mirrors your mind. If you're in your meditation practice and start to drift away into thoughts, there's a good chance the thumbs in your mudra will drift apart and space will open up between your thumbs. If you start to succumb to sleep and collapse into the fog of drifting to sleep, your mudra will probably collapse as well. Another example of your mudra mirroring your mind is that if you are sitting and arguing with someone in your mind, your thumbs will push together, expressing conflict. The mudra rests comfortably on your lap so that it's close to your belly. You don't want to be holding it too high or let it drift too low.

It's important that your spine is properly aligned. Imagine a string going through your spine and somebody lightly pulling the string to straighten you. Lift up from the back of your head, and push down your tailbone so that your spine is stretched. At the same time, allow your spine to set back. When your spine is aligned in this way, your body hangs on it like a garment hangs on a coat hanger. It should be easy and restful, yet precisely alert.

Your chin should be slightly tucked in. Press your tongue forward and up so the tip of the tongue meets the roof of the mouth at the teeth. Creating a slight suction in the mouth prevents you from having to swallow saliva constantly.

Your eyes should be open and cast slightly down. Keeping them open helps reduce the chance of drifting into sleep or daydream. There are many forms of meditation in which people close their eyes. In zazen, it is important to keep them open since the goal is to engage with your life exactly as it is. It is not helpful in the middle of trial to need to close your eyes to access your Zen practice.

Physically Center Your Body

In zazen practice, it is important to become aware of your *center-point*, sometimes referred to as the still-point or the one-point. The center-point sits about three finger-widths below the belly button. Lightly allow your awareness to rest in your center-point as you follow the breath's inhalations and exhalations. Every time you feel your mind pulling you around by thoughts, gently return to your breath and to your center-point.

Each time you do this, it's as though you take a grain of sand and drop it into your center-point so that gradually your center-point accrues mass and gravitational weight. This center-point becomes something you can take with you whether you're sitting in zazen, walking through the park, or cross-examining a witness. It is the development of this center-point that was particularly helpful to the samurai on the battlefield. And so it can be helpful to you in trial. This will happen by itself naturally if you practice sitting while aware of your center. Each time you breathe in, inhale into your center-point; each time you breathe out, exhale from your center-point.

Counting Your Breaths

Don't try to manage your breath in any particular way. Many times, people feel that they need to artificially induce long, slow breathing. This is not necessary. If you simply breathe with awareness of your center-point, the breath will naturally deepen without effort by you.

You can get a sense of this by lying on the ground and placing one hand on your chest and the other just below your belly button. You can then feel where you're breathing from in the body. Most people breathe up in the chest most of the time, creating a kind of panting. It's important to be able to breathe from deep in the diaphragm; so

practice on the ground a little bit and get some sense for what it is to breathe deep and low. It can help to visualize a balloon in the belly so that when the balloon expands, it draws the breath down into your belly, and when the balloon collapses, it pushes the breath out. This is also exactly what you need to do for your voice to project in the courtroom.

Ideally, you should be able to relate to the breath like waves coming in and out at the ocean. Your job is simply to sit there, observe, and let the waves of breath roll in and out. There is no need to manage them, fix them, or edit them in any way.

What to Do with Your Mind during Zazen

What do you do during zazen when your mind interacts with the physical world? When sights and sounds distract you? When your mind wanders? We will return to the mind in more detail in the Zen core in part 5 later in the book, but, for now, I will talk about the physical senses and touch on the mind stream.

The beginning zazen practice always centers on the awareness of the breath rooted in the center-point. The simple guidance is to “prefer the breath.” To facilitate this, lightly sound the number *one* in your mind as you breathe in. Let the space between the inhale and exhale simply be there, and then as the exhale happens, lightly sound the number *two* internally. Let the space between the exhale and the inhale just be there. Then, at the next inhale, lightly sound the number *three*, and so on, until you get to *ten*. Then start over at *one* and repeat this over and over.

The numbers help by giving you something to connect with as you enter into practice, rather like a life raft in the midst of the ocean of your own mind. While you prefer awareness of the breath, this is

simply a starting point. It does not mean you should exclude other things from your awareness. This is a very important point.

When sitting zazen, you may become aware of different sounds in your environment or sensations in the body or even other random thoughts. This awareness is not a problem. The problem arises if you unknowingly get pulled out of your awareness of the breath and begin to play with the thoughts.

In a similar way, during witness examination at trial, you can be aware of other events and sounds and stimuli in the room. You might be hungry, or the judge may be looking annoyed, or a juror might be yawning. You're getting data from all kinds of sources. At the same time, you need to be able to stay precisely connected to the moment, to your questioning, or whatever else is going on.

It is the same in your Zen sitting practice. Whether you are tired, excited, bored, or in any other state, practice staying aware of your breath.

As you sit in your zazen posture, you may start by silently counting your breaths and, in a few short moments, begin to reflect on how great it is that you've taken up a meditation practice. You may see a bird flying by or hear a car passing. You may consider how wonderful you feel, note how much stress is being relieved, and feel how much more focused you are. Then you may recall that café back in college that always smelled of patchouli oil and books . . . How delicious the coffee was there . . . How you'd like a cup of coffee now . . . And on and on the mind stream will go, carrying you right along with it.

In zazen, it's important to know where your mind is and to get it focused in your center-point. Thoughts in the mind stream become distractions when they remove you from the experience of the moment. They capture your awareness and take you from the center-point. When your mind is captured by a thought, and you are no longer aware of your breath, notice that this has occurred, acknowledge it, and let your awareness gently return to counting your breath. This is a moment of awakening. The thought that

distracted you is not an enemy. You have not failed when this happens. You have begun developing a habit of mindfulness by being aware when you are not focused.

The fact that these thoughts exist in your mind stream is not a problem any more than the sounds of the birds outside or the rain on the roof. It is only a problem when you unknowingly get pulled around by these thoughts that you need to do something about it.

Posture When Practicing Law

Finding a good posture is important not only for the long-term health of your body. Sitting comfortably and straight allows your energy to leave your body immediately. This is true when sitting zazen and when sitting practicing law. When you sit at your desk and at depositions, try to sit on the forward third of your chair with both feet firmly on the ground. This is a healthy posture; it sends a message of alertness and respect to the person sitting across from you. Throughout the day, pay attention to your posture. Notice it when you are working at the computer, when you are meeting with a client, when you are arguing to the court. Notice if you are pushing your neck forward or backward. Pay attention to how people react to your physical posture. When you are across from people in conversation, or watching someone give a webinar, notice how you feel about them if they are leaning into you, or into the shot, versus lounging back.

Sitting Posture

Continue to build on the zazen sitting practice from the Introduction in which you counted your breaths. This time you will do the same while experimenting with different postures so you can find one that suits you. It can take months to find the right posture. For now, you can get a rough idea of what works for you.

Again, silently count one as you inhale, two as you exhale, three as you inhale . . . up to ten, and then start over. Do this a couple times, being mindful of your breath. It's great if you have a meditation mat and cushion, but you can use any pillows, cushions, or chairs you have available.

Set a timer and sit zazen for five to ten minutes. Change postures and repeat, until you narrow it to one or two postures that work for you.

Recap

- ◆ Find a posture that is comfortable for you when sitting zazen. This posture is helpful at other times, including during depositions and trials.
- ◆ Your beginning zazen practice is to silently count to ten, counting each in and out breath, and then start again.
- ◆ When sitting zazen, gently return to counting your breath whenever you are distracted.