

RUTGERS JOURNAL OF LAW & RELIGION

VOLUME 12

FALL 2010

PART 1

Editor-in-Chief
CARLY KARLBERG

Managing Editor
JEFF PILLAR

Lead Articles Editor
DAVID ESTES

Research and Writing Editor
SHANNON PHILLIPS

Lead Notes Editor
CATHERINE REILLY

Lead Nuremberg Editor
BEVERLY BEAVER

*Lead New Developments
Editor*
NABILA SAEED

Business/Marketing Editor
GREGORY CONLEY

Lead Technical Editors
KATHARINE M. KRASSAN
SCOTT SIMPKINS

*Associate
Managing Editors*
LAUREN COOLEY
ERIC FREEMAN
DANIELLE GOLD
RACHEL GALLAGHER

*Associate
Technical Editors*
JENNY AGILA SEFAN

*Associate
Articles Editors*
KELLY BARSE
KERRY CAHILL

*Associate
Nuremberg Editors*
SAMANTHA KUGLER
GIGIO K. NINAN

*Associate
Notes Editors*
CAITLIN DUNSTON
MIKE RASOR
DAVID STAMM

*Associate
New Developments Editors*
JESSICA DONOGHUE
RICHARD RAMONES

*Associate Research and
Writing Editors*
RACHEL BREKKE
ANDREW SEIKEN

*Associate Business and Marketing
Editor*
KAYCI PETENKO

RUTGERS JOURNAL OF LAW & RELIGION

-ARTICLE-

CAN COMPASSIONATE PRACTICE ALSO BE GOOD LEGAL PRACTICE?: ANSWERS FROM THE LIVES OF BUDDHIST LAWYERS

Deborah J. Cantrell*

TABLE OF CONTENTS

I. Introduction.....	3
II. Setting the Stage: Buddhist Traditions in the United States	5
A. Two Buddhisms in America	5
B. A Very Short Primer on Particular Buddhist Traditions in America.....	7
1. Commonalities Among the Yanas	8
2. Theravada Tradition: Vipassana	12
3. Mahayana Traditions: Zen and Tiep Hien	13
4. Vajrayana: Tibetan Traditions	15
III. Methodology.....	15
A. Selecting the Participants.....	15
B. Definition of “Lawyer” and “Buddhist Practice”	16
C. General Scope of the Interviews	17
IV. Findings.....	17
A. Geographic Regions Represented.....	18
B. Legal Practice Areas Represented	18
C. Religious Upbringing.....	21
D. Coming to Buddhism (or not).....	24
1. Overview.....	24
2. Some Individual Stories.....	26
E. What Constitutes Buddhist “Practice”	34
F. Lawyerly Values	38
G. Lawyerly Practice as a Buddhist Practice.....	40
H. Discussions of Buddhist Practice with Client and Colleagues	51
I. Interplay Between Buddhist Practice and the Rules of Professional Conduct	56

* Associate Professor, University of Colorado Law School. With deep gratitude and respect, I thank the fifteen participants in this project. Without their generosity, candor, and patience, this project would not have happened. Thank you to my colleagues at the University of Colorado Law School, particularly Sarah Krakoff and Pierre Schlag. Thanks to Leanne Hamilton and Wunpenn Zaborek for tireless research assistance, and to Jane Thompson, Assistant Library Director, for finding many obscure materials for me. Thanks also to William Boyd for suggesting a qualitative instead of quantitative approach for this project.

V. Reflections on the Interviews.....	59
A. Observations of the Expected	60
1. American Buddhist Lawyers as American Buddhists	60
2. Buddhist Lawyers Can Be as Qualmish as Other Lawyers About Religion.....	60
3. Participants Strongly Believed That Their Buddhist Practices Make Them Better Lawyers.....	62
B. Observations of the Unexpected.....	67
1. Buddhist Lawyers Practice in a Range of Settings and Are Not Congregated in Any Particular Practice Area	67
2. The Importance of Honesty as a Lawyerly Value	71
3. The Importance of Compassion as a Lawyerly Value	73
VI. Conclusion	75

ABSTRACT

What does it mean to say that one is a “good lawyer” in the United States? The dominant view is that a lawyer is a zealous advocate owing loyalty to, and taking direction from, the client. The lawyer is singularly focused and hyper-rationality is prized. This article challenges that narrative. Using the real lives of a group of lawyers across the United States, this article offers rich and nuanced descriptive data about the possibilities of “good lawyering” through compassion, equanimity, and an expanded notion of honesty. This article contributes importantly to the debate about what it means to be a “good lawyer” by moving beyond speculation to an actual inquiry and dissection of lawyering that prioritizes professional values other than those privileged by the mainstream view.

I. INTRODUCTION

Imagine the following scene:

A litigation partner in a large law firm enters his office on Monday morning and the first item on his calendar is a meeting with a client related to a new litigation matter about which the client is extremely anxious and angry. The client has told the partner over the phone that the client wants to “nail the other side to the wall.”

Possible Ending One: To prepare for the meeting, the partner spent the preceding weekend reviewing materials the client had provided. The partner stayed up until 3:00 a.m. the night before the meeting sketching out litigation strategies, including one particularly aggressive approach. At the meeting, the partner presented the client with the list of litigation strategies, leading with the aggressive approach.

Possible Ending Two: To prepare for the meeting, the partner spent Friday afternoon reviewing materials the client had provided. The partner then spent the weekend leading a retreat for the local Zen Center. The partner entered the Monday morning meeting calm, open, and ready to learn from the client.

The lawyer from Possible Ending One fits with many popular images of the zealous advocate. A good lawyer is one who will go to all legal and ethical lengths to represent her client's stated interests. We associate certain intense, adversarial, and even addictive behaviors with that lawyerly type, and that association has an unfortunate resonance with fact.¹ Yet what about the lawyer from Possible Ending Two? Can she also be a good lawyer? This article explores that question in the context of a qualitative study of Buddhist lawyers. The traits associated with Buddhist practice include compassion, equanimity, and an expanded notion of honesty. This paper examines how Buddhist lawyers incorporate those traits into their law practice, and in doing so, ultimately argues that the dominant image (and perhaps reality) of the good lawyer is too narrow. The Buddhist lawyer not only can be a good lawyer, but can offer us concrete examples of lawyerly behavior that illuminate what is lacking in the dominant image.

Debates about what constitutes a good lawyer abound in the bar and the scholarly literature. Positions range from decrying the erosion of professionalism² to espousing that lawyers must separate their personal moral values from their practice.³ While some scholars have theorized that religious, and even Buddhist, values can inform ethical legal practice,⁴ none have undertaken the kind of in-depth examination of practicing Buddhist lawyers that comprises the heart of this paper.

This qualitative study takes the theory to the ground, and is the first of its kind. Based on extensive interviews of fifteen participants, this article provides a detailed, but preliminary,

¹ See, e.g., Patrick Schiltz, *On Being A Happy, Healthy, Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).

² See generally MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).

³ See Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 U. COLO. L. REV. 1 (2003); Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577 (1993).

⁴ See Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, 26 FORDHAM URB. L.J. 1069 (1999); Joseph Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 FORDHAM L. REV. 1101 (1998); Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 FORDHAM L. REV. 1405 (1998); Thomas E. Baker & Timothy W. Floyd, *A Symposium Precipis*, 27 TEX. TECH L. REV. 911 (1996) (introducing symposium in which lawyers of many faiths were asked to narrate how faith informed their professional work); Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613 (1993); Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME LAW. 231 (1979).

catalog of Buddhist lawyers in the United States. The narratives presented include lawyers who currently practice, or have practiced, in a wide range of legal settings, from large firms to solos, from government lawyers to corporate counsel, legal aid, criminal prosecution and defense, law faculty, and law school administration. The group also includes lawyers with a range of experience levels, from newer lawyers (three years from graduation) to very experienced lawyers (over 30 years from graduation).

Each of the fifteen participants identify as having some level of Buddhist practice. Many have committed to a particular form of Buddhist practice, like Zen or one of the Tibetan traditions, while others have recently begun exploring a basic contemplative practice. The participants offer candid and comprehensive descriptions of the ways in which they understand their obligations as lawyers and the ways in which they understand their aspirations as Buddhist practitioners. They talk about the ways in which there is interplay between their lawyering and their Buddhist practices, and they consider whether they have found tensions between their lawyerly roles and their spiritual roles. All have concluded that they are better lawyers because of their Buddhist practices.

This article first situates Buddhist traditions in America, providing some historical and canonical background. It then delves into the professional lives of the fifteen participants, providing information on their legal careers, their religious upbringings, and the ways in which they came to Buddhism. It next describes how the participants have each connected their Buddhist practices and their lawyering practices, exploring ways in which Buddhism and lawyering are harmonious and ways in which they may be in tension. The article concludes by squarely asking, “Can a Buddhist be a good lawyer?” It answers the specific question with a definitive yes, thereby importantly expanding general theories about what counts as good lawyering.

II. SETTING THE STAGE: BUDDHIST TRADITIONS IN THE UNITED STATES

A. Two Buddhisms in America

The lawyers who participated in this project are, of course, a very small portion of a larger community of Buddhist lawyers in the United States, which is itself only a small part of a

general community of Buddhists in America. In order to have some context in which to consider the stories of the fifteen participants in this project, it is important to sketch out some broader descriptive parameters about Buddhists in the United States.

There has been a Buddhist presence in America since at least the mid-1800s.⁵ From its inception, Buddhism in America has had two fairly independent elucidations – (1) Buddhism as known and practiced by immigrants from countries in which Buddhism was a well-established religion and (2) Buddhism as learned by Westerners.⁶ An example of the first is Buddhism as practiced by Chinese immigrant railroad laborers in the mid to late 1800s, who built Buddhist temples along the California coast.⁷ An example of the second is Buddhism as practiced by New Yorker Helena Blavatsky, who co-founded the Theosophical Society in 1875 and formally committed to Buddhism in 1880.⁸

Scholars of American Buddhism have found discernible differences between the two paths of American Buddhism. As a starting matter, the fact that there are two paths has meant that describing a person as an “American Buddhist” is unhelpful.⁹ It has been unhelpful not only because it does not capture differences in Buddhist practices between the two paths, but also because of the risks of privileging one path over the other and of interpreting “American” to mean white and not inclusive of others.¹⁰ Thus, scholars have spent intensive effort on developing an appropriate nomenclature. There now appears to be a reserved consensus to use “Asian immigrant Buddhism” and “American convert Buddhism” to describe the two paths.¹¹ This Article will follow that convention.

Because all fifteen of the participants in this project would be considered American convert Buddhists,¹² it may be useful to briefly describe two primary differences between American convert Buddhism and Asian immigrant Buddhism. One is that American convert

⁵ CHARLES S. PREBISH, *LUMINOUS PASSAGE: THE PRACTICE AND STUDY OF BUDDHISM IN AMERICA* 3-4 (1999).

⁶ *Id.* at 3-7.

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ *Id.* at 57-63.

¹⁰ *Id.* at 57. See also RICHARD HUGHES SEAGER, *BUDDHISM IN AMERICA* 9 (1999). Seager notes that Buddhists born in America can be of European, Asian, and Native American backgrounds, just as “there are white collar Buddhists; Buddhist cab drivers, mechanics, and chefs.” *Id.*

¹¹ PREBISH, *supra* note 5, at 61-63. See also SEAGER, *supra* note 10, at 9-10.

¹² Just as Buddhist scholars remain unsettled about nomenclature, not all of the participants are easy with being labeled “convert Buddhists.”

Buddhists highlight the place of meditation in Buddhist practice.¹³ In contrast, Asian immigrant Buddhists generally “maintain practices consistent with ritual activity”¹⁴ The difference is one of emphasis; it is not that American convert Buddhists only practice meditation without ritual or that Asian immigrant Buddhists only practice ritual without a contemplative practice.¹⁵

A related difference is that American convert Buddhists have de-emphasized distinctions between lay Buddhists and monastic Buddhists.¹⁶ As Charles Prebish has described, in Asian countries with Buddhist traditions, the “monastic unit” is extremely important, and separate from, the laity.¹⁷ In contrast, American convert Buddhists emphasize integrating their ordinary lives with a contemplative practice.¹⁸ One noted American convert Buddhist teacher, Jack Kornfield, described integration as follows:

North American Buddhists have already begun to develop means to integrate and live the practice as householders, as family people, as people with jobs who still wish to partake of the deepest aspects of the Dharma [Buddhist teachings] – not through running away to caves, but by applying practice to their daily lives.¹⁹

As discussed more fully below, the fifteen participants follow the patterns for American convert Buddhism.

B. A Very Short Primer on Particular Buddhist Traditions in America

For readers less familiar with the general tenets of Buddhism, this section will briefly introduce core concepts shared by all Buddhist traditions, as well as briefly describe the particular Buddhist traditions represented by the fifteen participants in this project. This section

¹³ PREBISH, *supra* note 5, at 63. *See also* HUSTON SMITH & PHILIP NOVAK, *BUDDHISM: A CONCISE INTRODUCTION* 143-44 (2003).

¹⁴ PREBISH, *supra* note 5, at 63.

¹⁵ SEAGER, *supra* note 10, at 3-6.

¹⁶ PREBISH, *supra* note 5, at 70-73; SMITH & NOVAK, *supra* note 13, at 143-44.

¹⁷ PREBISH, *supra* note 5, at 70-72.

¹⁸ *Id.* at 71-72.

¹⁹ PREBISH, *supra* note 5, at 71.

is not comprehensive, but is intended to introduce readers to several core principles or activities of Buddhism that the fifteen participants refer to throughout their narratives.²⁰

Like other religions, Buddhism is divided into multiple schools.²¹ Buddhists generally refer to the schools as “yanas” or “vehicles.”²² They are: Theravada, Mahayana and Vajrayana, although some scholars consider Vajrayana to be a part of Mahayana.²³ Also like other religions, within each school, there are more particular traditions. For example, within Mahayana, there is the Japanese Zen tradition, and within Japanese Zen, there are more particular traditions such as Soto Zen and Rinzai Zen.²⁴

1. Commonalities Among the Yanas²⁵

All three yanas share certain core characteristics and principles. An important characteristic is the idea of “practice” – think piano practice or soccer practice. The Buddha set out a kind of daily training regimen designed to enable any person to understand the world as it really exists. The training regimen is called the Eightfold Path and it is part of the foundational principle of Buddhism called the Four Noble Truths.²⁶ The Noble Truths are:

First Noble Truth: Life is dukkha (usually translated in English as “suffering”).

Second Noble Truth: The cause of dukkha is tanha (usually translated in English as “desire”).

²⁰ For a more comprehensive overview of Buddhist traditions in America, see SEAGER, *supra* note 10, at chs. 5-10. See also PREBISH, *supra* note 5, at ch. 3.

²¹ For example, within Christianity, there are multiple schools including Catholicism, Protestantism, and Episcopalian.

²² SEAGER, *supra* note 10, at 21.

²³ *Id.* at 22, 23, 29. In this article I will follow the approach of treating Vajrayana as its own vehicle. There are also some variations in describing yanas. See, e.g., THICH NHAT HANH, THE HEART OF THE BUDDHA’S TEACHINGS 13 (1998) (describing Source Buddhism, Many-Schools Buddhism, and Mahayana Buddhism).

²⁴ SEAGER, *supra* note 10, at 27-29.

²⁵ This section is intended to be a very cursory introduction to core Buddhist principals. Readers who are interested in a more thorough understanding might review Smith & Novak, *supra* note 13. See also SEAGER, *supra* note 10, at ch. 2.

²⁶ SEAGER, *supra* note 10, at 14-16.

Third Noble Truth: The end of dukkha comes by overcoming tanha.

Fourth Noble Truth: The way of overcoming tanha is the Eightfold Path.²⁷

The translation of “dukkha” into the English word of “suffering” may be misleading. A more appropriate translation is the idea that things are askance or dislocated; “Something has gone wrong. It is out of joint. . . . [I]ts pivot is not true.”²⁸ According to the Second Noble Truth, the reason that one’s life is askance is that one craves permanence in a world that is ever-changing.²⁹ One desires personal fulfillment, and clings to a false sense of an individualized, separate, permanent self.³⁰ The Third and Fourth Noble Truths instruct that one overcomes dislocation by following the Eightfold Path.³¹ The destination upon overcoming dukkha and tanha is an equanimity towards all, and to “rest in pure awareness.”³² That destination is referred to as nirvana, translated as “unbinding,”³³ or “to extinguish” or “blow out” as with a fire.³⁴ The idea of nirvana is not a sense of annihilation, but instead is the “highest destiny of the human spirit . . . [and] what is to be extinguished are the boundaries of the finite self”³⁵

The Eightfold Path is the practicum for reaching enlightenment. The Eightfold Path is generally translated as:

1. Right View
2. Right Intent
3. Right Speech
4. Right Conduct
5. Right Livelihood
6. Right Effort

²⁷ SMITH & NOVAK, *supra* note 13, at 31-37.

²⁸ *Id.* at 34.

²⁹ *Id.* at 34-35.

³⁰ *Id.* at 36-37.

³¹ *Id.* at 37.

³² Jack Kornfield, *This Fantastic Unfolding Experiment*, BUDDHADHARMA, Summer 2007, at 34.

³³ SEAGER, *supra* note 10, at 13.

³⁴ SMITH & NOVAK, *supra* note 13, at 51.

³⁵ *Id.* at 52. Buddha insisted that attempts to categorize or describe nirvana were useless as it is “incomprehensible, indescribable, inconceivable, unutterable.” *Id.*

7. Right Mindfulness
8. Right Concentration³⁶

Each part of the Eightfold Path helps to train a person in those areas in which it is critical that a practitioner become experienced. Right View and Right Intent assist a practitioner to develop wisdom. Right Speech, Conduct, and Livelihood develop ethical behavior. Right Effort, Mindfulness, and Concentration develop productive contemplative practices.³⁷

Integral to the Buddha's approach are the ideas of impermanence (*annica*) and dependent arising.³⁸ The Buddha taught from the idea of constant change; "[n]othing in nature is identical with what it was the moment before" ³⁹ He further taught the interconnectedness of every thing and every process so that any thing or process depends on, or arises from, something else.⁴⁰ Thus, it is erroneous to hold onto a sense of oneself as individuated, unchanging, and unconnected to all else in the world.⁴¹

Two final important ideas are those of compassion and lovingkindness. Both are actions that result from understanding the interconnectedness and impermanence of the world, as well as actions that are cultivated by following the Eightfold Path.⁴²

Finally, Buddhism does not have the concept of a personal creator god, like that found in Christianity or Judaism.⁴³ Buddha called on each person to personally test and experience the Buddha's teachings.⁴⁴ As the Buddha said, "Be lamps unto yourselves. Those who, either now or after I am dead, shall rely upon themselves only and not look for assistance to anyone besides themselves, it is they who shall reach the topmost height."⁴⁵

³⁶ *Id.* at 41-49.

³⁷ SEAGER, *supra* note 10, at 16. Of course, there is much to be said about what conduct and practices are contained in any of the steps of the Eightfold Path. See, e.g., HANH, *supra* note 23, at Pt. Two.

³⁸ SMITH & NOVAK, *supra* note 13, at 57-62.

³⁹ *Id.* at 57.

⁴⁰ *Id.* at 61-62.

⁴¹ *Id.* at 57-62.

⁴² *Id.* at 67-68.

⁴³ *Id.* at 53.

⁴⁴ SMITH & NOVAK, *supra* note 13, at 24.

⁴⁵ *Id.* at 24 (quoted in E. A. BURTT, THE TEACHINGS OF THE COMPASSIONATE BUDDHA 49-50 (1955)).

As Buddhism developed, there also developed some common ways in which practitioners formally committed to a Buddhist practice, and in which Buddhist teachers were acknowledged as being sufficiently learned. Generally, the first formal step one takes is “refuge,” which is akin to a public declaration that one intends to undertake a Buddhist practice.⁴⁶ In taking refuge, a person acknowledges Buddha as a teacher, acknowledges the teachings of Buddha (known as the Dharma), and acknowledges that one is becoming part of a community (Sangha) of Buddhist practitioners.⁴⁷ When one takes refuge, one also agrees to follow five basic precepts: not to kill, steal, engage in sexual misconduct, lie, or use intoxicants.⁴⁸ Generally, at the time one takes refuge, one also asks to become a student of a particular Buddhist teacher.

Those who intend more serious study, such as becoming a monk or nun, proceed through more intensive training, which in most traditions includes a series of further vows and commitments to additional precepts.⁴⁹ For example, in Zen, a person may privately ask to become a student of a teacher. Then, the student may take Jukai vows, in which the student publicly takes refuge and accepts sixteen precepts (depending on the tradition) from her teacher.⁵⁰ The next step is to take Tokudo vows, or ordination as a monk or nun.⁵¹ Finally, if a teacher finds the student to have a true insight into teachings and enlightenment, the teacher may give Shiho (dharma transmission) to a student.⁵²

Buddhist teachers generally are described as being a part of a lineage, reflecting the idea that a tradition’s knowledge and doctrine can be traced back through time, often to the Buddha.⁵³ Thus, a teacher may be referred to as a “dharma heir” of that teacher’s teacher.⁵⁴ Or, a person who becomes a teacher in a tradition may be said to have received transmission.⁵⁵ Teachers may be lineage holders in more than one tradition with the same yana. For example,

⁴⁶ SEAGER, *supra* note 10, at 18.

⁴⁷ This description of taking refuge is simplified. Readers should note that Buddhist traditions may differ on what constitutes “dharma” and “sangha,” but those discussions are not particularly relevant to the project described in this article. *See, e.g., Id.* at 18.

⁴⁸ *Id.* at 18.

⁴⁹ *Id.* at 18-19.

⁵⁰ *Id.* at 109.

⁵¹ *Id.* at 108.

⁵² SEAGER, *supra* note 10, at 107.

⁵³ *Id.* at 17.

⁵⁴ *Id.* at 107.

⁵⁵ *Id.* at 107.

one of the teachers of a participant in this project is a lineage holder in two schools of Vajrayana.⁵⁶

2. Theravada Tradition: Vipassana

The Theravadan yana developed early after the death of the Buddha.⁵⁷ Its canonical texts are written in Pali and its monastic practitioners in the East generally hold themselves as strict adherents to the original teachings of the Buddha.⁵⁸ In the United States, and among participants in this project, it is represented in the form of Vipassana, or Insight Meditation tradition.⁵⁹ That tradition is most robustly represented through the Insight Meditation Society (“IMS”), founded in 1975 by Jack Kornfield, Joseph Goldstein, and Sharon Salzberg.⁶⁰ Each of the three American-born founders studied extensively with Vipassana teachers in the East.⁶¹ For example, Jack Kornfield studied in Thailand both as a lay person and as a monk, then moved to Burma to study under another Vipassana master.⁶² In 1988, Kornfield helped IMS open a center on the West Coast, named Spirit Rock.⁶³ Several of the participants in this project have participated in contemplative retreats and other events held at Spirit Rock.

Vipassana is a contemplative practice that emphasizes basic awareness of one’s surroundings, including “sight, sound, taste, smell, physical perceptions, feelings, and thoughts.”⁶⁴ Through basic awareness, the practitioner becomes mindful of “how conditioned the world is and how these conditions constantly change.”⁶⁵ Through that mindfulness, the practitioner then seeks to “step back” from committing to, or identifying with, any particular and inconstant condition.⁶⁶

⁵⁶ Telephone Interview with Susan Busby, (May 11, 2009).

⁵⁷ SEAGER, *supra* note 10, at 22.

⁵⁸ *Id.* at 22.

⁵⁹ There are other Theravadan traditions present in the United States, but in this discussion I focus only on the traditions present among the fifteen participants in my project. *See generally, Id.* at 136-46.

⁶⁰ *Id.* at 147. *See also* Kornfield, *supra* note 32, at 35.

⁶¹ SEAGER, *supra* note 10, at 147.

⁶² Kornfield, *supra* note 32, at 32-33.

⁶³ *Id.* at 36; SEAGER, *supra* note 10, at 147.

⁶⁴ Kornfield, *supra* note 32, at 34.

⁶⁵ *Id.* at 34.

⁶⁶ *Id.* at 34-35.

It has been noted that an interesting feature of Insight Meditation is that it is less overtly associated with Buddhism than some other traditions, and that it is often “not presented as a religion but as an awareness technique fostering awakening and psychological healing through the use of practices taught by the Buddha.”⁶⁷

3. Mahayana Traditions: Zen and Tiep Hien

Participants in this project practice in two Mahayanist traditions: Zen and Tiep Hien (in English, the Order of Interbeing). Before describing those particular traditions, it is important to describe the primary difference between Theravadan and Mahayanist vehicles. As noted above, Theravadan traditions understand themselves to be committed to the original teachings of the Buddha. In practice, that means a monastic focus in which individuals concentrate on their own efforts towards enlightenment.⁶⁸ Mahayanist traditions, however, work from an expanded canon, from which the idea of the “bodhisattva” has developed.⁶⁹ A bodhisattva is someone who seeks enlightenment, but postpones attaining nirvana in order to assist others along the path to enlightenment.⁷⁰ Both Zen and Tiep Hien include the concept of the bodhisattva.

Zen Buddhism in America has flourished, and there are a notable number of American-born Zen teachers who have received dharma transmission.⁷¹ Zen is noted for its particular style of contemplative practice, and Rinzai Zen is noted as well for its use of koans.⁷² Zen contemplative practice includes a daily sitting practice known as “zazen” and intensive multi-day sitting retreats known as “sesshin.”⁷³ Koans are short stories, most closely associated with Rinzai Zen, which are used as teaching devices.⁷⁴ Unique to Zen is the notion that a master

⁶⁷ SEAGER, *supra* note 10, at 148.

⁶⁸ *Id.* at 22.

⁶⁹ *Id.* at 24.

⁷⁰ *Id.*

⁷¹ *Id.* at 90-91.

⁷² G. Victor Sogen Hori, *Japanese Zen in America: Americanizing the Face in the Mirror*, in *THE FACES OF BUDDHISM IN AMERICA* 50 (Charles S. Prebish & Kenneth K. Tanaka, eds., 1998).

⁷³ *Id.* at 54.

⁷⁴ SEAGER, *supra* note 10, at 109-110.

“teach[es] without teaching.”⁷⁵ The teacher expects a student to “seek and search for himself until he [the student] comes to a genuine firsthand insight into the koan.”⁷⁶

Zen Buddhism in America has also developed a notable commitment to social engagement.⁷⁷ For example, Roshi Bernard Tetsugen Glassman founded an organization called the “Zen Peacemaker Order,” which engages in numerous trainings and activities to pursue peace and social justice.⁷⁸ Roshi Glassman’s peacemaking efforts came after sustained work in Westchester County, New York, where he and his colleagues ran a housing facility that provided shelter, child care, and job training to the local community.⁷⁹

The Tiep Hien Order is also known for its commitment to social engagement.⁸⁰ The order was founded by Buddhist Master Thich Nhat Hanh, who was trained in Vietnam and later exiled for his social activism.⁸¹ Hanh developed a set of fourteen “mindfulness trainings” coming from the Mahayanist teachings on the Bodhisattva.⁸² The trainings call on participants to actively engage in the world in a manner that promotes social justice. For example, the Eleventh Mindfulness Training is on Right Livelihood and provides:

Aware that great violence and injustice have been done to our environment and society, we are committed not to live with a vocation that is harmful to humans and nature. We will do our best to select a livelihood that helps realize our ideal of understanding and compassion. Aware of global economic, political and social realities, we will behave responsibly as consumers and as citizens, not supporting companies that deprive others of their chance to live.⁸³

⁷⁵ Hori, *supra* note 72, at 57.

⁷⁶ *Id.*

⁷⁷ Prebish, *supra* note 5, at 102; SEAGER, *supra* note 10, at 104-05.

⁷⁸ SEAGER, *supra* note 10, at 105. *See also* Zen Peacemakers, <http://www.zenpeacemakers.org/> (last visited Aug. 23, 2010).

⁷⁹ SEAGER, *supra* note 10, at 104.

⁸⁰ Sister Annabel Laity, *Introduction* to THICH NHAT HANH, *ESSENTIAL WRITINGS* 1, 4 (Robert Ellsberg ed., 2001).

⁸¹ *Id.* at 10.

⁸² *Id.* at 8. *See also* Order of Interbeing, <http://www.orderofinterbeing.org/aboutoi.html> (last visited Aug. 23, 2010).

⁸³ THICH NHAT HANH, *The Fourteen Mindfulness Trainings of the Order of Interbeing*, in *ESSENTIAL WRITINGS*, *supra* note 80, at 155.

4. Vajrayana: Tibetan Traditions

The final yana in which participants in this project practice is Vajrayana, which has been particularly developed in Tibet.⁸⁴ There are four major schools, each with many lineages, in Tibetan Vajrayana: Sakya, Gelugpa, Kagyu, and Nyingma.⁸⁵ Within this project, participants study with teachers in the Nyingma and Kagyu schools. Vajrayana contemplative practices are in many ways similar to those of other yantras, but there are some unique features. For example, practitioners generally include a ngondro (nun-dro) practice.⁸⁶ Often called “the preliminaries,”⁸⁷ ngondro practice is designed to prepare the student for later, higher practices.⁸⁸ The practice is assigned to the student by her teacher and may include activities such as prostrations, visualizations, and chanting.⁸⁹

III. METHODOLOGY

A. Selecting the Participants

I interviewed fifteen lawyers for this study, all but one of whom live in the United States. One participant lives in Toronto, Canada. I initially solicited participation in my study by posting an announcement to several law-related listservs. In the announcement, I indicated that I was undertaking a research project to gather information about lawyers who also considered themselves to have a Buddhist practice. The post did not place any parameters on what work constituted “lawyering,” nor what constituted a “Buddhist practice.” (A choice that I discuss further below). I did not solicit people to forward my listserv posts to others. However, recipients were free to forward the post on their own.

In order to ensure that participants in my project spanned a range of geographic regions, legal practice areas, and Buddhist practice areas, I used a modified “first-come, first-selected” process. My presumption was to interview the first fifteen people who responded to my listserv

⁸⁴ SEAGER, *supra* note 10, at 29.

⁸⁵ *Id.* at 31. His Holiness the Fourteenth Dalai Lama comes from the Gelugpa lineage. *Id.* at 120.

⁸⁶ *Id.* at 130-31.

⁸⁷ Telephone Interview with Jeannine Woodall, (May 22, 2009).

⁸⁸ SEAGER, *supra* note 10, at 131.

⁸⁹ *Id.* at 130.

post, and with whom I was actually able to set up an interview. However, as certain geographic areas started to become over-represented, I did not select further respondents in those areas. In particular, I had more responses from New England and California than from any other geographic region. Thus, I forewent interviewing some respondents in those geographic regions so that I could include respondents from the South, Midwest, and Southwest.

I conducted an extensive interview with each of the fifteen participants. The interviews lasted from 1.5 to 3 hours, and each was audio-recorded with the consent of the participant. I interviewed two participants in person and the remaining by telephone. For each of the interviews I followed the same general outline of questions. Participants could choose whether to participate in this project anonymously or not.⁹⁰ The majority of participants chose to identify themselves.

After I completed the interviews, each audio recording was transcribed. The fifteen participants have each reviewed their respective material contained in this article and have approved it.

B. Definition of “Lawyer” and “Buddhist Practice”

As noted above, I asked participants to identify as a lawyer as well as having a Buddhist practice. Because there is little other qualitative data currently available about Buddhist lawyers in the United States,⁹¹ I wanted to ensure that this project captured the widest range of experiences. In that way, I hoped to be able to sketch out the broadest descriptive parameters so that future research could be designed to refine the data. Thus, in selecting participants, I limited myself to confirming with participants that they identified themselves as lawyers and that they described themselves as having a Buddhist practice. I did not expect to find much variation in what constituted being a lawyer, as contrasted with what participants described as their practice of law, on which I expected variation. I also expected to see a fairly wide variety in what participants identified as a Buddhist practice. In particular, based on the general

⁹⁰ If a participant has chosen anonymity, then she or he will be referred to in this article using a pseudonym. The first time the participant’s pseudonym appears, it will be in quotations. After the first time, I drop the quotation marks from the pseudonym.

⁹¹ See sources cited supra note 4 (referencing materials in which individual lawyers have reflected on their Buddhist practices).

research about Buddhism in America described in Section II, I expected that all of the participants would have experience with some sort of contemplative practice, but that there would be greater variation on whether participants had studied Buddhist doctrine or identified as practicing in a particular Buddhist tradition. As will be discussed more fully below, my expectations held true.

C. General Scope of the Interviews

My interviews were designed to gather some general background about each participant as well as to delve more thoroughly into the ways in which participants understood there to be interplay between their lawyerly practices and their Buddhist practices.⁹² I inquired about the course of a participant's legal career, her or his religious upbringing, how the participant was introduced to Buddhism, and the details of her or his current practice. I also inquired about the primary values that participants expected a lawyer to exhibit in professional practice, and whether that list of values had changed over time. I asked participants about how open they were with colleagues, clients, or others in the legal profession regarding their Buddhist practices. I collected as many specific examples as I could of the ways in which participants described bringing Buddhist practices into their lawyering. Finally, I asked about ways in which a participant had experienced, or believed, that the Rules of Professional Conduct were consistent with, or contradictory to, the requirements of their Buddhist practice.

IV. FINDINGS

The participants in this project each provided rich details and narratives about their own experiences. In reporting the findings, I have tried to capture the wide range and diversity of the participants' experiences, while also noting commonalities. I have organized the findings along topical areas. In each area, I have not attempted to catalogue every participant's response, but instead report a sampling of responses in more detail. The sample responses are exemplary of the range of information provided by the full group of fifteen participants.

⁹² As will be discussed more fully in the "Findings" section, some of the participants identified as having a "contemplative" practice rather than a "Buddhist" practice.

A. Geographic Regions Represented

Of the fifteen participants, four each were from New England and Northern California, two were from the Southwest (New Mexico and Arizona), and there was one participant each from the South (Georgia), Midwest (Kansas), Rocky Mountain West (Utah), and Toronto, Canada.⁹³ Not surprisingly, where participants now live may not have been the geographic region in which they were raised. For example, Tonya Kowalski lived in Connecticut until she was twelve, when her family moved to Florida. She went to college in Florida, went to law school in North Carolina, clerked and practiced law in the states of Washington and Oregon, began teaching in Arizona, and now teaches at Washburn University School of Law in Kansas.⁹⁴ Other participants, like Charlie Babbitt, are practicing law in the same area in which they grew up – in Charlie’s case, in his hometown of Flagstaff, Arizona. Charlie spent time away from Arizona during college and after law school, but he returned to Flagstaff when he had the opportunity to work with a lawyer who specialized in civil rights and criminal defense.⁹⁵

B. Legal Practice Areas Represented

The fifteen participants also represent a myriad of legal practice areas. Seven of the participants are in private practice, but range widely in practice settings. For example, Mary Zachar is a solo practitioner in Southern California. She came to solo practice after an extensive career, including work in civil litigation, juvenile delinquency, intellectual property, and mediation.⁹⁶ Others practice in law firms, like “Bill Meyers,” who is a third-year associate in a California office of a large law firm,⁹⁷ and Michael D. Zimmerman, a partner in the Salt Lake City office of Snell & Wilmer and a former justice of the Utah Supreme Court.⁹⁸

⁹³ My project was designed to gather data about Buddhist Lawyers in the U.S., but I had several responses from Canadian lawyers to my listserv postings. I included one such respondent to reflect the level of interest in the project from Canadian lawyers. One other respondent was raised in Canada, but went to law school in the U.S. and has practiced law exclusively in the U.S.

⁹⁴ Telephone Interview with Tonya Kowalski, (May 26, 2009).

⁹⁵ Telephone Interview with Charlie Babbitt, (May 27, 2009).

⁹⁶ Telephone Interview with Mary Zachar, (May 22, 2009).

⁹⁷ Telephone Interview with Bill Meyers, (May 29, 2009).

⁹⁸ Telephone Interview with Michael D. Zimmerman, (May 19, 2009).

Still others are in smaller law firms, often specializing in particular practice areas. For example, Susan Busby is an attorney at a Connecticut family law firm and specializes in collaborative divorce and mediation.⁹⁹ Prior to joining her current firm, she had practiced at a large, regional firm in the areas of environmental insurance defense and trusts and estates.¹⁰⁰ Similarly, Richard Power is a partner at a twelve-person firm in Northern California, where he specializes in affordable housing.¹⁰¹ He has practiced law for almost forty years, including serving as a “Reggie”¹⁰² public interest fellow, a prosecutor in the Santa Cruz district attorney’s office, a real estate development lawyer, and an affordable housing lawyer, first for a non-profit and now in his own law firm.¹⁰³ Karen Mendenhall has been litigating with the same law firm partner in New Mexico for the last eleven years.¹⁰⁴ They focus on complex, often highly-contested, litigation.¹⁰⁵ Charlie Babbitt, mentioned above, has moved away from civil rights and criminal defense and now focuses on bankruptcy. He is in the process of forming a law partnership in Flagstaff.¹⁰⁶

Four of the participants teach. David Zlotnick is the Associate Dean for Academic Affairs at Roger Williams University School of Law, where he teaches and writes on criminal law and advocacy.¹⁰⁷ Before becoming associate dean, he also occasionally taught and supervised students in the school’s Criminal Defense Clinic. He is a former federal prosecutor.¹⁰⁸ Tonya Kowalski is an associate professor at Washburn, focused on legal writing.¹⁰⁹ She has experience as a civil and appellate attorney, and was a staff member, then visiting assistant professor, at the Indian Legal Clinic at the Sandra Day O’Connor College of

⁹⁹ Telephone Interview with Susan Busby, *supra* note 56.

¹⁰⁰ *Id.*

¹⁰¹ Telephone Interview with Richard Power, (May 19, 2009). *See also* Carle Mackie Power & Ross LLP, <http://www.cmprlaw.com/default.asp> (last visited Aug. 23, 2010).

¹⁰² “Reggie” fellows were recent law school graduates who received a federally-funded stipend to work in the newly-created federal legal services program created in the late 1960’s by President Johnson. *See* Deborah J. Cantrell, *A Short History of Poverty Lawyers in the United States*, 5 LOY. J. PUB. INT. L. 11, 19 (2003).

¹⁰³ Telephone Interview with Richard Power, *supra* note 101.

¹⁰⁴ Telephone Interview with Karen Mendenhall, (May 8, 2009).

¹⁰⁵ *Id.*

¹⁰⁶ Telephone Interview with Charlie Babbitt, *supra* note 95.

¹⁰⁷ Telephone Interview with David Zlotnick, (May 12, 2009).

¹⁰⁸ *Id.*

¹⁰⁹ Telephone Interview with Tonya Kowalski, *supra* note 94.

Law at Arizona State University.¹¹⁰ Marc Poirier is a professor at Seton Hall University School of Law, where he writes and teaches about property, gender, sexuality, and the law.¹¹¹ He, too, had applied legal experience, working at a Washington, D.C. firm and specializing in energy regulation. He returned to school for an LL.M. degree and then moved into the legal academy.¹¹² Jamie Baker Roskie teaches at the University of Georgia Law School where she is the managing attorney of the Land Use Clinic.¹¹³ Law was her second career, having previously been an immigrants' rights advocate. She became interested in land use during law school, worked in the area at a Washington, D.C. law firm after graduation, and then returned to Georgia to direct the Land Use Clinic.¹¹⁴

Three of the participants work in a government setting. "Seth Linton" is a family relations counselor for the Judicial Branch of the State of Connecticut.¹¹⁵ He makes recommendations to judges in both civil and criminal cases on issues related to domestic violence, dissolutions, and parental rights.¹¹⁶ As part of his job, he also mediates issues related to dissolutions and parental rights.¹¹⁷ The job is the one he had hoped to have upon graduating from law school, but the judicial branch did not have the budget to hire at the time, so he spent some years as a lobbyist and researcher for philanthropies.¹¹⁸ Seth is the one participant who has not taken the bar. "Sarah Weller" works with the State Bar of California.¹¹⁹ She has been a lawyer for over ten years. Before joining the State Bar, she had worked in a regional law firm, in house for a corporation, and also for a non-profit legal advocacy organization.¹²⁰ Finally, "Laura Howe" works in the general counsel's office of a California municipality's transit authority.¹²¹ Laura graduated from law school about five years ago. After graduation, she was a litigation associate at a regional law firm for two years and then spent a year clerking for a federal district court judge. After her clerkship, she took eight months off during which she

¹¹⁰ *Id.*

¹¹¹ Interview with Marc Poirier, Boulder, Colo. (May 26, 2009).

¹¹² *Id.*

¹¹³ Interview with Jamie Baker Roskie, Cleveland, Ohio (May 6, 2009).

¹¹⁴ *Id.*

¹¹⁵ Telephone Interview with Seth Linton, (May 11, 2009).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Telephone Interview with Sarah Weller, (May 18, 2009).

¹²⁰ *Id.*

¹²¹ Telephone Interview with Laura Howe, (May 27, 2009).

focused on her interest in dance. She then joined the local transit authority's office of general counsel.¹²²

The Canadian participant, Jeannine Woodall, works in the admissions office of her law school alma mater, Osgoode Hall Law School.¹²³ Before returning to Osgoode, Jeannine worked for the Ontario Securities Commission and the Ontario Financial Services Commission.¹²⁴ She also runs her own yoga studio, which she opened in 2003.¹²⁵

C. Religious Upbringing

In an effort to understand whether the participants had any common background experiences with religion, I asked them to describe any religious upbringing they had. The fifteen participants recounted a wide range of experiences. Several described growing up in households in which there was only a generalized exposure to religion. As Karen Mendenhall put it, she was raised “casually Protestant” and has considered herself an atheist for a long time.¹²⁶ Similarly, Sarah Weller described herself as being “loosely raised” Catholic.¹²⁷ For Mary Zachar, her extended family was Catholic, but Catholicism was “not particularly present” in her own home.¹²⁸

Others had a more sustained introduction to religion while growing up. As Michael Zimmerman described it:

As a kid, I was a, my parents were Presbyterians in Illinois. My mother was the superintendant of the Sunday school and my father was a trustee on the governing board of several of the churches we attended. I attended Sunday school, but by the time I was about 15 or 16, I lost any sense of the divinity of Christ or any particular belief in God.¹²⁹

¹²² *Id.*

¹²³ Telephone Interview with Jeannine Woodall, *supra* note 87.

¹²⁴ *Id.*

¹²⁵ Jeannine initially opened the studio with two partners, but now has a smaller solo studio. *Id.*

¹²⁶ Telephone Interview with Karen Mendenhall, *supra* note 104.

¹²⁷ Telephone Interview with Sarah Weller, *supra* note 119.

¹²⁸ Telephone Interview with Mary Zachar, *supra* note 96.

¹²⁹ Telephone Interview with Michael Zimmerman, *supra* note 98.

Michael returned to church in his late thirties when he had children because he and his Catholic wife felt that the children should be introduced to religion. As a compromise, they attended an Episcopal church, but he “never got great inspiration out of it” and described himself as having “a humanist belief system.”¹³⁰

Bill Meyers had a similar experience. As he said, “My dad is atheist but my mom is Roman Catholic, and as a condition of their marriage, they were going to raise the kids Roman Catholic. So I grew up Roman Catholic and went to church every week.”¹³¹ He, too, became disenchanted with his religious training in his teens and stopped going to church.¹³²

Bill’s experience of having parents from different religious traditions was shared by four other participants. Marc Poirier’s mother was Jewish, while his father was Catholic. He described himself as “being raised culturally Jewish” in North Carolina, but also feeling the interest by his father’s family in having him participate in various Catholic events.¹³³ As he headed off to college, Marc did not think of himself as a “religious person,” and while he would identify himself as Jewish, he did so without “any deep sense of obligation.”¹³⁴

Like Marc, Laura Howe had one parent who identified as Jewish (her father), while her mother had been raised in a Christian household but was not herself religious. Laura told her story this way:

I had almost no religious training growing up. I’m not sure that my parents would actually say this, but I would call them atheists. My father, though, is ethnically Jewish, so we did celebrate Hanukah, and there would be references to other Jewish holidays. We never observed Yom Kippur or Rosh Hashanah. I think we may have gone to some Passover seders with friends. My mom, though, who is not at all Jewish, who was raised in a Christian environment, but totally rejected that, she just loves Jewish rituals.¹³⁵

After college, Laura became very interested in her Jewish heritage. Her paternal grandfather was the only member of his family to survive the Holocaust, and she felt it important not to let

¹³⁰ *Id.*

¹³¹ Telephone Interview with Bill Meyers, *supra* note 97.

¹³² *Id.*

¹³³ Interview with Marc Poirier, *supra* note 111.

¹³⁴ *Id.*

¹³⁵ Telephone Interview with Laura Howe, *supra* note 121.

that memory die. She began going with a friend to a synagogue that offered services for young adults.¹³⁶ During law school, she continued “on and off” to attend the synagogue.¹³⁷

A few of the participants had fairly sustained religious training. David Zlotnick was brought up in a Jewish household.¹³⁸ He noted: “my great-grandfather was a revered Talmudic scholar in Russia. Until I was thirteen, I was expected to go to temple every Saturday, I could walk down myself. My family’s home was kosher – still is.”¹³⁹ However, David also noted that his religious training felt to him to be more about culture.¹⁴⁰

For Jamie Baker Roskie, religious training came more seriously as she approached her high school years. Her mother wanted Jamie to “have a sense of something greater in the world than just [her]self.”¹⁴¹ Jamie explained:

So we started going to the Methodist church, and we got really involved in the church and got really involved with the youth activities. And then I got involved with youth activities on the conference level, which is northern California and Nevada, and I ended up in this youth ministry, with all these kids from high school, and all these people from northern California and Nevada, and we coordinated the youth ministry portion of the conference. All of my friends from high school were from CCYM [Conference Council on Youth Ministry]. . . . So CCYM really became my—my closest friend still is someone I met in CCYM.¹⁴²

Jamie met her husband at a church conference and they remained active in the Methodist church, including taking some church-related trips to Africa.¹⁴³

Two participants recalled being introduced to Buddhism as children. Jeannine Woodall’s paternal grandfather was an Episcopal or Presbyterian minister in California, who taught courses on Buddhism at a local university.¹⁴⁴ She found him inspiring and recalled childhood visits to her grandparents’ “amazing house on the ocean in California,” describing those visits

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Telephone Interview with David Zlotnick, *supra* note 107.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Interview with Jamie Baker Roskie, *supra* note 113.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Telephone Interview with Jeannine Woodall, *supra* note 87.

by stating: “When I went there I just felt like I was connecting in some way to some part of the universe that I wasn’t normally exposed to in everyday life”¹⁴⁵

Charlie Babbitt has an aunt who, when he was a child, was practicing in a Tibetan Buddhist tradition. He described early memories of her telling him about her practice and he recalled: “The ethical provisions, I guess, jived with my intuition, about not killing and right action and right livelihood and so forth.”¹⁴⁶ Charlie also has a memory of meditating when he was ten years old.¹⁴⁷ He joined the Boy Scouts for a bit and, in going through the list of available merit badges, discovered a dharma wheel (a symbol from Buddhism) and planned to work towards that badge (although he was discouraged from doing so by his troop leader).¹⁴⁸ Interestingly, the Boy Scouts were also the first source of information on Buddhism for Richard Power. He recalls going to a Boy Scout jamboree when he was twelve and learning some basic information about Buddhism.¹⁴⁹

D. Coming to Buddhism (or not)

1. Overview

The fifteen participants practice in a full range of Buddhist traditions, including Theravada, Mahayana, and Vajrayana.¹⁵⁰ All of the participants came to Buddhism having grown up in the Western world. Thus, as noted earlier, in the current nomenclature, problematic as it may be, they are “American convert Buddhists” as opposed to “Asian immigrant Buddhists.” The Theravadan tradition is represented by Vipassana practitioners in the tradition of the Insight Meditation Society.¹⁵¹ One participant spent time in a Theravadan-based forest monk tradition.¹⁵²

¹⁴⁵ *Id.*

¹⁴⁶ Telephone Interview with Charlie Babbitt, *supra* note 95.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Telephone Interview with Richard Power, *supra* note 101.

¹⁵⁰ *See supra* Part II (discussing general Buddhist traditions).

¹⁵¹ Telephone Interview with Laura Howe, *supra* note 121; Telephone Interview with Bill Meyers, *supra* note 97; Telephone Interview with Sarah Weller, *supra* note 119.

¹⁵² Telephone Interview with Charlie Babbitt, *supra* note 95.

The Mahayanist tradition is represented by Japanese Zen and Tiep Hien (Order of Interbeing). Within Zen, participants have studied under teachers in both the Soto and Rinzai lineages, particularly through American derivations such as Mountains and Rivers Order (John Daido Looi),¹⁵³ Ordinary Mind Zen (Charlotte Joko Beck with transmission to Barry Magid),¹⁵⁴ and Big Mind Zen (Genpo Merzel Roshi).¹⁵⁵

The Vajrayana tradition is represented by students who have studied under teachers of the Nyingma and Kagyu lineages, including the Dzogchen Ponlop Rinpoche of Nalandabodhi,¹⁵⁶ Lopon Ugyen Rinpoche,¹⁵⁷ and other teachers in the Karma Kagyu lineage.¹⁵⁸

Some of the participants have made formal commitments in their particular Buddhist traditions. For example, the four participants practicing in Tibetan traditions have each taken refuge and Bodhicitta/Bodhisattva vows.¹⁵⁹ Of the Zen practitioners, one has received dharma transmission,¹⁶⁰ another has been formally accepted as a student under an American Zen master,¹⁶¹ and a third is preparing to be formally accepted as a student with a Japanese Zen master now residing in America.¹⁶²

Several of the participants have practiced in more than one tradition. For example, receiving training in Vipassana and also in Zen;¹⁶³ receiving training in general Mahayanist teachings and then focusing on Zen;¹⁶⁴ or, exploring Mahayanist traditions and then focusing on Vajrayana.¹⁶⁵

The fifteen participants also range widely in the length of time that they have had a Buddhist practice. As seen below, some participants have had some kind of Buddhist practice

¹⁵³ Interview with Marc Poirier, *supra* note 111.

¹⁵⁴ *Id.*

¹⁵⁵ Telephone Interview with Michael Zimmerman, *supra* note 98.

¹⁵⁶ Telephone Interview with Susan Busby, *supra* note 56; Telephone Interview with Seth Linton, *supra* note 115.

¹⁵⁷ Telephone Interview with Jeannine Woodall, *supra* note 87.

¹⁵⁸ Telephone Interview with Tonya Kowalski, *supra* note 94.

¹⁵⁹ Telephone Interview with Susan Busby, *supra* note 56; Telephone Interview with Tonya Kowalski, *supra* note 94; Telephone Interview with Seth Linton, *supra* note 115; Telephone Interview with Jeannine Woodall, *supra* note 87.

¹⁶⁰ Telephone Interview with Michael Zimmerman, *supra* note 98.

¹⁶¹ Interview with Marc Poirier, *supra* note 111.

¹⁶² Telephone Interview with Richard Power, *supra* note 101.

¹⁶³ Telephone Interview with Laura Howe, *supra* note 121.

¹⁶⁴ Telephone Interview with Karen Mendenhall, *supra* note 104.

¹⁶⁵ Telephone Interview with Tonya Kowalski, *supra* note 94.

for close to twenty years. Others are just starting to explore a contemplative practice, and are still discerning whether they also identify their contemplative practice as Buddhist.

2. Some Individual Stories

Charlie Babbitt's introduction to Buddhism via his aunt, and his recollection of meditating around the age of ten, was the start of a fairly sustained exploration of Buddhism that he continues today (he is about 30 years old now). As a teenager, he read books on meditation and Buddhism, and he continued to meditate, "but not with any dedication at all."¹⁶⁶ As he described it, meditation "was attached to Buddhism, but it was not particularly sophisticated."¹⁶⁷ He began college at Antioch College in Ohio, which had a well-developed Buddhist studies program and many different meditation groups on campus.

The college is organized on a "co-op" system where students spend alternating blocks of time at traditional studies then away from school working. Charlie's first work co-op was as a monk's assistant with a group of Burmese Buddhist Forest monks who resided at a monastery outside Santa Cruz, California. Charlie's four months at the monastery immersed him in practice. Describing this experience, he explained:

I didn't speak any Burmese, and only one of them [the monks] spoke any English, so it wasn't like I got a great theological education, but I got a lot of meditation experience. . . . There was a real routine, and we got up at 5:00 a.m. and ate at 10:00 a.m., and it's always the same food, always the same routine. It was really hard. I was kind of an out-of-control teenager, and I think that was the first thing that dialed me into being an adult. . . . They were not very strict with me. They let me leave if I wanted to, and sometimes I would skip meals because I forgot. But they told me, your brain is young, you can't really do any better than this, therefore we accept you. It was incredible. . . . [I]n the Theravada tradition it's customary for young men to be ordained as a monk as a sort of trial period. So, my reward at the end of this was they actually did ordain me briefly. Man, it was hard. It wasn't very hard being a monk's attendant, but being a monk was tough. Just staying awake, and trying to get up in

¹⁶⁶ Telephone Interview with Charlie Babbitt, *supra* note 95.

¹⁶⁷ *Id.*

the morning and do stuff, and the first thing upon waking is two hours of silent meditation. I'm used to Cheerios and Sponge Bob.¹⁶⁸

Charlie's trial time as a monk was only a week long, but he recounts that it took him "a long time to appreciate how much value [he] . . . got out of it, but it was the most important experience of [his] . . . life thus far."¹⁶⁹

Marc Poirier has also had a long immersion in Buddhism, ultimately leading him to become a formal student of Barry Magid in the Ordinary Mind School of Zen.¹⁷⁰ Marc graduated from law school in the late 1970s and then moved to Washington, D.C. One day he was in a book store and saw a book that had fallen off the shelves.¹⁷¹ It was Philip Kapleau's *The Three Pillars of Zen*, one of the first books written in English and designed to teach the pragmatics of Zen practice.¹⁷² After reading Kapleau's book, Marc looked in the phone book and found a Zen center and made a personal commitment to maintain a contemplative practice for at least ten years (based on Kapleau's admonition that the benefits of a Zen practice take time to develop).¹⁷³ In the late 1980s, Marc wondered whether Zen was the appropriate practice for him and he began concurrently to attend Shambala trainings.¹⁷⁴ He also studied for a period with a Sri Lankan Buddhist teacher, Bhante Henepola Gunaratan, and later began a Tai Chi practice, attending a Unity Church in Washington, D.C.¹⁷⁵

In 1990, Marc moved to New Haven, Connecticut to work on an LL.M. degree at Yale Law School. He visited the Zen Center in New Haven, which follows a Korean Zen tradition that Marc found unappealing.¹⁷⁶ He found a Quaker meeting that he participated in during his time in New Haven.¹⁷⁷ Marc accepted a teaching position at Seton Hall University in New Jersey and, after a few years, he returned to his Zen practice. He began going to Brooklyn to sit

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Interview with Marc Poirier, *supra* note 111.

¹⁷¹ *Id.*

¹⁷² See SEAGER, *supra* note 10, at 93.

¹⁷³ Interview with Marc Poirier, *supra* note 111.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

and study with Bonnie Myotai Treace, a dharma heir of John Daido Looi.¹⁷⁸ In 1994, Marc formally became a student of Daido Looi.¹⁷⁹

In 2004, Marc received challenging news – he was diagnosed with Hodgkin’s lymphoma.¹⁸⁰ While he was in the hospital for treatment, he relied extensively on his Buddhist training and contemplative practice.¹⁸¹ As he worked towards recovering physically from chemotherapy, Marc began taking yoga classes at his gym. Unexpectedly, he found that the physical part of the yoga practice revitalized his contemplative practice. As Marc described it, “the last year or year and a half has been an unbelievably remarkable and exciting set of discoveries around body practice.”¹⁸² As a result, he changed Zen teachers in order to work with someone who encouraged the combination of yoga and Zen practice.¹⁸³ Marc is now a student of Barry Magid and plans to take Jukai vows with him.¹⁸⁴ (In the Zen tradition, Jukai vows are a public declaration of one’s intent to commit to a Buddhist practice).¹⁸⁵

While Charlie and Marc have had extended immersion into Buddhism, many other participants came to Buddhism in search of a meaningful way to cope with a difficult or stressful period in his or her life. For Michael Zimmerman, it was his wife’s diagnosis with, and then death at forty-two from, cancer.¹⁸⁶ During her treatment, Michael and his wife went to a meditation training taught by Jon Kabat-Zinn.¹⁸⁷ Michael found it helpful and read a couple of Kabat-Zinn’s books. After Michael’s wife died, he found himself not only the single parent to three young daughters, but also the newly elevated chief justice of Utah’s Supreme Court. He “was under a lot of pressure” and would “just get so cranked up” that he turned to a morning meditation practice to find some calm.¹⁸⁸ He also began a scholarly investigation of various

¹⁷⁸ *Id.*

¹⁷⁹ Interview with Marc Poirier, *supra* note 111

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ E-mail from Marc Poirier, (July 10, 2009).

¹⁸⁵ *See* SEAGER, *supra* note 10, at 109.

¹⁸⁶ Telephone Interview with Michael Zimmerman, *supra* note 98.

¹⁸⁷ Jon Kabat-Zinn has written several books about using meditation to reduce stress. *See, e.g.*, JON KABAT-ZINN, *COMING TO OUR SENSES: HEALING OURSELVES AND THE WORLD THROUGH MINDFULNESS* (2005); JON KABAT-ZINN, *FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS* (1990).

¹⁸⁸ Telephone Interview with Michael Zimmerman, *supra* note 98.

Eastern religions, including Taoism. As Michael described it, he took a “sort of anthropologic and psychologic” approach to the backgrounds of various religions.¹⁸⁹

He then met his current wife, who received a degree from Naropa University and studied under Chogyam Trungpa Rinpoche.¹⁹⁰ She noted that there was a Zen Center near Michael’s house and, after taking some initial classes, he and his wife began a serious Zen study and practice. He took Jukai vows in 1998, and then later both he and his wife took Shukke Tokudo, or monk’s vows.¹⁹¹ In late 2006, he received dharma transmission from his teacher, Genpo Merzel Roshi, some six months after his wife had received transmission.¹⁹² He remains practicing law fulltime at his firm, while also teaching classes at the Zen Center and teaching on retreat.¹⁹³

Like Michael, Laura Howe began to explore Buddhism when a family member became very ill. Facing her mother’s serious illness, Laura had the “biggest crisis that [she’s] . . . ever had to deal with” and she struggled with the fact that she was powerless to make her mother better.¹⁹⁴ During the time her mother was ill, someone mentioned Pema Chodron¹⁹⁵ to her. Laura read one of Chodron’s books. For Laura, the book gave her “a totally different way of thinking about problems, or just life Just reading that book really changed the way [she] . . . thought and felt about [her] . . . family’s situation so much, and [she] . . . got so much relief from it.”¹⁹⁶ Reading the book prompted Laura to try a meditation class in January 2008. She has since meditated in the Vipassana tradition as well as in the Zen tradition, and started hosting a weekly meditation group at her home as a way of having a group of practitioners closer to her own age.¹⁹⁷

¹⁸⁹ *Id.*

¹⁹⁰ Naropa University is a Buddhist-inspired institution in Boulder, Colorado founded in 1974 by Chogyam Trungpa Rinpoche. See Naropa University, History: The 20th Century, <http://www.naropa.edu/about/history.cfm> (last visited Aug. 23, 2010).

¹⁹¹ Telephone Interview with Michael Zimmerman, *supra* note 98.

¹⁹² *Id.* Michael’s wife also received dharma transmission from Genpo Merzel Roshi. *Id.*

¹⁹³ *Id.* As a designated teacher in the Zen tradition, Michael is known as Michael Mugaku Zimmerman Sensei. *Id.* See Big Mind Zen Center, <http://www.bigmind.org/Lineage.html> (last visited Aug. 23, 2010); The Boulder Mountain Zendo, http://www.thebouldermountainzendo.org/Boulder_Mountain_Zendo/Teachers.html.

¹⁹⁴ Telephone Interview with Laura Howe, *supra* note 121.

¹⁹⁵ Pema Chodron is a well-known ordained Buddhist nun who studied with Chogyam Trungpa Rinpoche.

¹⁹⁶ Telephone Interview with Laura Howe, *supra* note 121.

¹⁹⁷ *Id.*

Nonetheless, Laura does not describe herself to others as a Buddhist. She worries that the commitment she now makes to a contemplative practice and to “informal mindfulness” may not be as deep or consistent as that made by other Buddhists.¹⁹⁸ As she says, “I don’t want to offend anyone who really has dedicated [himself or herself] in a way in terms of study or time commitment. . . . So, I don’t want to take that on and appropriate that label if I’m not making that commitment.”¹⁹⁹

Bill Meyers has a similar hesitancy in identifying himself as Buddhist. He was first introduced to some basic meditation techniques while in high school, and then took a course on Buddhism while in college.²⁰⁰ After college, through law school, and until about year ago, Bill meditated intermittently, but did not have a sustained contemplative practice. As he described it, “[I]t would be . . . a period of time with stretches of nothing, and stretches of time when I’m meditating a whole lot and reading about Buddhism and then back to nothing for a long time.”²⁰¹ Last year Bill went to a five-day retreat at Spirit Rock, the Vipassana center in Northern California.²⁰² In the spring of 2009, Bill returned to Spirit Rock for a lawyers’ retreat sponsored by the Center for Contemplative Mind in Society. Since the lawyers’ retreat, he has tried to maintain a consistent meditation practice.²⁰³

Bill is still trying to sort out how his commitment to a contemplative practice relates to a broader commitment to Buddhism. On the one hand, Bill notes that “I wouldn’t normally say to people ‘I’m a Buddhist’ because it means too many things.”²⁰⁴ On the other hand, he thinks there is “a lot of wisdom” in many Buddhist teachings, and that he is motivated to meditate even though he finds that “a lot of times meditation can be frustrating and disappointing.”²⁰⁵

Some participants have come to a Buddhist practice as part of a longer investigation of spirituality in their lives. For example, Jeannine Woodall came to her Buddhist practice via a yoga practice, which she started while in law school.²⁰⁶ Before law school, Jeannine had received a master’s degree in art history. She was used to having a “close connection” to her

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Telephone Interview with Bill Meyers, *supra* note 97.

²⁰¹ *Id.*

²⁰² *See supra* Part II.B.2.

²⁰³ Telephone Interview with Bill Meyers, *supra* note 97.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Telephone Interview with Jeannine Woodall, *supra* note 87.

teachers, and to working within a small group of students.²⁰⁷ She exchanged that for a law school entering class of about 300 students. It was “culture shock” for Jeannine.²⁰⁸ Her first year, she thoroughly dedicated herself to her law studies, to the exclusion of other activities that had been a part of her pre-law school life. As she said:

I had just worked so hard and I had given up the creative writing that I would normally do and all of those things that were part of who I, you know, how I balanced my life, I guess, I'd kind of just given them up, so I made a decision after the first year of law school that I was not going to let that happen again, and that's when I started taking yoga classes.²⁰⁹

Jeannine continued yoga seriously throughout law school and after graduation. Ultimately, she left her position at the Ontario Securities Commission to open a yoga studio.²¹⁰

While teaching yoga, Jeannine began to explore yoga philosophies more deeply, which led her to read some materials related to Tibetan Buddhism.²¹¹ Then, a colleague called her to tell her that a Tibetan lama, Lopon Ugyen Rinpoche (“Rinpoche”), was to be visiting Toronto and asked whether Jeannine would be interested in inviting him to teach at her yoga studio. She was, and unexpectedly the day before Rinpoche was to arrive, Jeannine's father died.²¹² Jeannine kept her meeting with Rinpoche, who suggested some initial practices for her related to her father's death.²¹³

Shortly thereafter, Jeannine began more serious study with Rinpoche in the Nyingma tradition.²¹⁴ She began her ngondro practice²¹⁵ and has taken refuge and Bodhisattva vows.²¹⁶

Like Jeannine, Tonya Kowalski started a yoga practice in law school, which “in retrospect, caused a subtle . . . opening in [her] . . . mindset.”²¹⁷ In her third year of law school,

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Telephone Interview with Jeannine Woodall, *supra* note 87.

²¹³ *Id.*

²¹⁴ *See supra* Part II (discussing the traditions within Tibetan Buddhism).

²¹⁵ *See supra* Part II.B.4.

²¹⁶ Telephone Interview with Jeannine Woodall, *supra* note 87. *See supra* Part II.B (discussing refuge and Bodhisattva vows).

²¹⁷ Telephone Interview with Tonya Kowalski, *supra* note 94.

she began to learn more about Eastern religions and their traditions.²¹⁸ She was particularly attracted to Buddhism because it encouraged direct experience, and her own trial and error.²¹⁹ For the most part, Tonya has studied without committing formally to a specific teacher. As she describes it, she does go to “teachers from time to time, but I try to avoid collecting teachings, and instead keep the practice consistent and simple from day to day.”²²⁰

It took the “crucible” of being a federal prosecutor for David Zlotnick to conclude he was working too hard and not paying attention to other aspects of his life.²²¹ David worked in the U.S. Attorney’s office in Washington, D.C. As he described it:

It was during the crack epidemic in D.C, so it was a war zone. We had witnesses getting shot; I prosecuted police officers, gang cases, drug cases, all sorts of things. It was very challenging work. Every seven to twelve months you were rotated to a different job . . . so you literally had a new job at least once a year. . . . I had exposure to unbelievable stuff and it was very stressful.²²²

When David left the U.S. Attorney’s Office to start teaching law in 1993, he “promised [him]self [he] would do something about [his] spiritual life”²²³ He began by returning to karate, but “it didn’t really stick.”²²⁴ In 1996, he moved to Rhode Island to teach at Roger Williams University School of Law.²²⁵ It was in Rhode Island that David took his first meditation class, which led him to start reading about Buddhism, particularly American Buddhism.²²⁶

He received a Soros Senior Justice Fellowship in 2002, which took him back to Washington, D.C. for two years to work on issues related to federal sentencing.²²⁷ There, he met Tara Brach, the founder of, and a teacher at, the Insight Meditation Community of

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Telephone Interview with David Zlotnick, *supra* note 107.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Telephone Interview with David Zlotnick, *supra* note 107.

Washington.²²⁸ He began attending her Wednesday evening Vipassana meditation class and has maintained a contemplative practice since. That practice has included silent retreats and the lawyers' retreat at Spirit Rock.²²⁹

As David developed his contemplative practice, he made an interesting discovery. He looked back on times of sustained physical activity and he realized that he had used that activity as a mode of contemplative practice.²³⁰ In college, he ran cross country and while he would not have called it a contemplative practice at the time, he now identifies it as such.²³¹ Similarly, David started swimming last winter to rehabilitate a shoulder injury. He found that his time in the pool "was all about breathing and rhythm and all you can do is watch your mind, and if you watch your mind too much, you get water in your nose"²³²

Like David, Richard Power began to study Buddhism more particularly after beginning a generalized meditation practice.²³³ Richard's generalized meditation practice led him to more sustained investigation in 2007, when he began a two-year program called the "Path of Engagement," organized by Spirit Rock Meditation Center.²³⁴ Richard joined thirty-four other students who were interested in "deepen[ing] their ability to embody spiritual principles in the midst of their action and engagement, responding to the needs and challenges of our times with more wisdom and compassion."²³⁵ Over the course of the two-year program, Richard and his colleagues studied Buddhist teachings, met in retreat, and cultivated personal contemplative practices. Richard now is preparing to take formal Jukai vows within the Zen tradition.²³⁶

For Susan Busby, Buddhism came after both a long interest in spiritual development and a series of challenging events in her life. While in college at McGill University, her godmother recommended a local church that was attended by many younger people.²³⁷ Susan participated

²²⁸ *Id.* See also Insight Meditation Community of Washington, Teachers, <http://www.imcw.org/teachers> (last visited Aug. 23, 2010).

²²⁹ Telephone Interview with David Zlotnick, *supra* note 107.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ Telephone Interview with Richard Power, *supra* note 101.

²³⁴ *Id.* See also Spirit Rock Meditation Center, The Path of Engagement Announcement, <http://www.spiritrock.org/display.asp?pageid=375&catid=2> (last visited Aug. 23, 2010).

²³⁵ Spirit Rock Meditation Center, *supra* note 234.

²³⁶ Telephone Interview with Richard Power, *supra* note 101.

²³⁷ Telephone Interview with Susan Busby, *supra* note 56.

in a spiritual development group, where she was introduced to some meditation techniques.²³⁸ She moved to Connecticut when she got married and learned of a local Congregational church that had an extensive social outreach program.²³⁹ Through the church, she became a pastoral counselor.²⁴⁰ Then came the “crazy year” during which her godfather and father died, and she divorced.²⁴¹ A friend recommended a book on Buddhism, and that led Susan to start sitting at a center in the Kagyu lineage of Tibetan Buddhism.²⁴² During her practice there, she learned of the Dzogchen Ponlop Rinpoche, with whom she now studies.²⁴³ She has become a director of practice in Nalandabodhi, the organization founded by Rinpoche in 1997.²⁴⁴

Susan chuckles when she recounts that her own study of Buddhism has recently expanded thanks to her high school-aged son.²⁴⁵ In her son’s social studies class, the teacher scheduled two weeks for students to learn about different religions. Susan recalls: “He [her son] had some questions about Buddhism that . . . completely baffled me because they were questions about other schools of Buddhism, and I didn’t really have a good ground in them. Since then I have been reading more about Zen Buddhism and trying to really understand more of the general Buddhist teachings.”²⁴⁶

E. What Constitutes Buddhist “Practice”

As noted in Part II.A, Buddhist scholars have reflected that American Buddhism is notable in foregrounding meditation as a primary part of what it means to “practice” Buddhism.²⁴⁷ During the course of my interviews, I asked each participant some variation of the question, “describe your Buddhist practice.” I tried to start with that open-ended question as a way of encouraging participants to describe what counted as “practice” to them without suggesting activities in advance. I would then follow up with specific questions, either to

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Telephone Interview with Susan Busby, *supra* note 56.

²⁴⁴ *Id.* See also Nalandabodhi, Mitra Council Office, <http://www.nalandabodhi.org/about-nalandabodhi/administration/mitra-council-office.aspx> (last visited Aug. 23, 2010).

²⁴⁵ Telephone Interview with Susan Busby, *supra* note 56.

²⁴⁶ *Id.*

²⁴⁷ See *supra* Part II.A..

clarify a participant's response or to ask a participant if she or he included a particular activity as part of practice.

All fifteen participants have some kind of contemplative practice. It was the most common starting response to my question, "describe your Buddhist practice." Several participants took care to qualify that they felt their meditation did not happen as regularly or consistently as they hoped. Charlie Babbitt noted that his meditation practice has "been very sporadic, but lately it's been pretty good."²⁴⁸ Similarly, Laura Howe said, "I don't meditate everyday, which I know I probably shouldn't be judging myself for that. At this point, I probably haven't meditated in about a week and a half."²⁴⁹ Further, Sarah Weller remarked that her sitting "isn't as regular as I'd like."²⁵⁰ I understood participants' clarifying the regularity of their meditation practice as a way of signaling the central role they understood meditation to have in a Buddhist practice.

Richard Power talked fairly extensively in his interview about the role of meditation in his practice. He began meditating in 2001 when he took an introductory Vipassana class.²⁵¹ It focused on practical meditation techniques, rather than teachings about Buddhism.²⁵² Taking the class prompted Richard to attend a lawyers' retreat at Spirit Rock at which "there wasn't a lot of Buddhism, it was much more, just meditation."²⁵³ As he became more engaged in meditation, Richard began reading about Buddhism and thinking about what the relationship was between his contemplative practice and Buddhism.

In describing how he now understands that relationship, Richard recounted reading an article by Alan Wallace in *Tricycle* magazine.²⁵⁴ In that article, Wallace articulated that Buddhist literature made clear that the point of a contemplative practice was not just "bare attention," but instead an ethically-engaged attention.²⁵⁵ Wallace's article captured nicely for

²⁴⁸ Telephone Interview with Charlie Babbitt, *supra* note 95.

²⁴⁹ Telephone Interview with Laura Howe, *supra* note 121.

²⁵⁰ Telephone Interview with Sarah Weller, *supra* note 119.

²⁵¹ Telephone Interview with Richard Power, *supra* note 101.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ Interview by The Tricycle Foundation with B. Alan Wallace, *A Mindful Balance: What Did the Buddha Mean by "Mindfulness?"*, in TRICYCLE, Spring 2008, at 60, available at http://www.alanwallace.org/spr08wallace_comp.pdf.

Richard the way his own view of his contemplative practice has developed from one in which the goal was “bare attention” to one in which the goal is ethically-engaged attention.²⁵⁶

In addition to meditation, many participants described their practice as including efforts related to the Buddhist ideas of compassion and lovingkindness. Tonya Kowalski described it this way:

If I'm dealing with someone who's really, whose energy is really kind of upsetting me, whether it's because they're a good, loving person, but they're so upset themselves that it's putting me off balance, or they're maybe angry about their grade and they're coming to me in a position of hostility . . . I try to . . . calm myself down and project compassion . . . to that person and just to the environment and that helps me to deal with that situation without also getting upset myself and getting off balance.²⁵⁷

Similarly, Jeannine Woodall understands her Buddhist practice to have helped her develop “more empathy” for other people.²⁵⁸ When she is working with people and they begin to feel “like obstacles,” she tries to see the situation more broadly and to “be more compassionate” in her responses to the people with whom she is engaged.²⁵⁹

Michael Zimmerman recounted his use of compassion both as a lawyer-advocate and as an arbitrator. As he said:

[W]hen I see other lawyers who are . . . sort of captured by ideology, you know, the ideology of the rightness of their position or their egos . . . the very fact that I can see them as that generates compassion. It doesn't mean that I go up and give them a hug, but it means I'm not going to send them something that's inflammatory. . . . [A]s an arbitrator . . . I see people stuck in positions, clients or lawyers, I feel compassion for them.²⁶⁰

For Sarah Weller, as she observes her colleagues who prosecute lawyers for ethical violations, lovingkindness has been a method that has helped her see more than just a

²⁵⁶ Telephone Interview with Richard Power, *supra* note 101.

²⁵⁷ Telephone Interview with Tonya Kowalski, *supra* note 94.

²⁵⁸ Telephone Interview with Jeannine Woodall, *supra* note 87.

²⁵⁹ *Id.*

²⁶⁰ Telephone Interview with Michael Zimmerman, *supra* note 98.

dichotomous world of “good guys and bad guys.”²⁶¹ Laura Howe also uses lovingkindness, considering it a form of service, both to her colleagues at work and to those in the transit authority for whom she is providing legal advice.²⁶² As she says, “When someone asks me to do something for them, I try to view it as an opportunity for me, as opposed to a burden.”²⁶³

Participants often recounted the ways in which they looked to everyday activities for opportunities to practice. Sarah Weller gave some examples:

[U]sing my phone as a mindfulness practice. So, if my phone rings, I go ‘Okay, where am I? Am I here?’ Other times when I’m at meetings, if I’m bored and my mind is wandering, I’ll try to bring awareness to my body again. . . . So things like how I sit in the chair, what are my hands doing.²⁶⁴

Richard Power describes trying to remember to take ten breaths before he takes a phone call.²⁶⁵ Tonya Kowalski also described paying attention to her breathing as a way of reminding her to keep a present focus.²⁶⁶ When I called Seth Linton for our interview, he was late getting back to his office and missed my call. When we did reach each other, he remarked that his embarrassment at missing my first call had actually served as a useful practice to interrupt him from becoming too attached to a set of expectations about our interview.²⁶⁷

In addition to commonalities of practice among the fifteen participants, they also gave examples of practices particular to their Buddhist tradition. As noted earlier, Jeannine Woodall is well into a ngondro practice²⁶⁸ that is part of the Tibetan Buddhist tradition in which she studies.²⁶⁹ Michael Zimmerman completed extensive Koan study in his Zen tradition, and now teaches it.²⁷⁰ Susan Busby is a practice instructor in Nalandabodhi.²⁷¹

²⁶¹ Telephone Interview with Sarah Weller, *supra* note 119.

²⁶² Telephone Interview with Laura Howe, *supra* note 121.

²⁶³ *Id.*

²⁶⁴ Telephone Interview with Sarah Weller, *supra* note 119.

²⁶⁵ Telephone Interview with Richard Power, *supra* note 101.

²⁶⁶ Telephone Interview with Tonya Kowalski, *supra* note 94.

²⁶⁷ Telephone Interview with Seth Linton, *supra* note 115.

²⁶⁸ *See supra* Part II.B.4.

²⁶⁹ Telephone Interview with Jeannine Woodall, *supra* note 87.

²⁷⁰ Telephone Interview with Michael Zimmerman, *supra* note 98.

²⁷¹ Telephone Interview with Susan Busby, *supra* note 56.

Several participants also combine Buddhist practices with a yoga practice, and find the combination very complementary. Marc Poirier, who, as noted earlier, began yoga to recover from chemotherapy, found that it “drastically shifted” his meditation practice for the better.²⁷² Tonya Kowalski finds that a physical yoga practice is an important way to remind herself that her Buddhist practice should not just be an intellectual endeavor.²⁷³ Jamie Baker Roskie and Jeannine Woodall both have active yoga practices.²⁷⁴

F. Lawyerly Values

Turning now to those findings that more particularly focus on lawyering, I was interested in what participants believed to be important values for a lawyer to hold. I also was interested to learn whether participants recollected whether their list of values had changed since the time they had graduated law school. Since most of the participants came to a Buddhist practice after graduating from law school, I hoped to learn whether participants believed their list of values had changed as a result of a Buddhist practice. I asked every participant to think back to his or her graduation from law school and to try and recollect what he or she would have said were the three most important values for a lawyer to hold. I then inquired how the participant would currently answer that question.

Many participants were not certain they could accurately think back to their law school graduations and reconstruct what they would have then identified as the three most important values for a lawyer. Nonetheless, every participant came up with a list. For almost all of the participants, the list they gave at the time of their law school graduation was still the list they currently held.

That finding may be an artifact of my interview technique, although some of the participants explicitly noted that they did not think their choice of values had changed since the time they graduated. Sarah Weller noted that the words she used to describe the values might have changed slightly, but that the intent was the same.²⁷⁵ Similarly, Jeannine Woodall, when

²⁷² Interview with Marc Poirier, *supra* note 111.

²⁷³ Telephone Interview with Tonya Kowalski, *supra* note 94.

²⁷⁴ Interview with Jamie Baker Roskie, *supra* note 113; Telephone Interview with Jeannine Woodall, *supra* note 87.

²⁷⁵ Telephone Interview with Sarah Weller, *supra* note 119.

specifically considering whether her Buddhist practice had changed her list of values, noted, “I don’t think my moral or ethical position has changed so much despite the fact that – since that time I’ve developed a Buddhist practice,” although the words she chose to articulate her values might have.²⁷⁶ Karen Mendenhall reminded me that she was in her forties when she went to law school. As she said, “I think it would have been pretty difficult to have my world view and my view of myself altered radically [by law school].”²⁷⁷

The value most often identified by participants was some variation of honesty or truthfulness. Five participants specifically identified honesty or truthfulness as one of the three most important values of a lawyer.²⁷⁸ Three others said integrity, and in describing what they meant, included honesty or truthfulness as a part.²⁷⁹ Not surprisingly, all of the participants who identified honesty, truthfulness, or integrity as values they held at the time of graduation said that they still put those values on their current list. Laura Howe noted that truthfulness now had a more comprehensive meaning for her, not only including rules she recalled from law school, like being candid to the court, but also not “sugar-coat[ing]” advice and information given to a client.²⁸⁰

Six participants voiced values related to showing compassion, respect, or dignity towards others.²⁸¹ Some, like Sarah Weller, directly identified the value as “compassion.” Others described it more broadly – “being a good neighbor,” in Charlie Babbitt’s words,²⁸² or “mutual respect,” as Seth Linton described it.²⁸³ Jamie Baker Roskie included working on behalf of those who are underserved.²⁸⁴

²⁷⁶ Telephone Interview with Jeannine Woodall, *supra* note 87.

²⁷⁷ Telephone Interview with Karen Mendenhall, *supra* note 104.

²⁷⁸ Telephone Interview with Charlie Babbitt, *supra* note 95; Telephone Interview with Karen Mendenhall, *supra* note 104; Telephone Interview with Jeannine Woodall, *supra* note 87; Telephone Interview with Laura Howe, *supra* note 121; Telephone Interview with Michael Zimmerman, *supra* note 98.

²⁷⁹ Telephone Interview with Sarah Weller, *supra* note 119; Telephone Interview with Susan Busby, *supra* note 56; Telephone Interview with Richard Power, *supra* note 101.

²⁸⁰ Telephone Interview with Laura Howe *supra* note 121.

²⁸¹ Telephone Interview with Charlie Babbitt, *supra* note 95; Telephone Interview with Sarah Weller, *supra* note 119; Telephone Interview with Susan Busby, *supra* note 56; Telephone Interview with Richard Power, *supra* note 101; Telephone Interview with Seth Linton, *supra* note 115; Telephone Interview with Jeannine Woodall, *supra* note 87.

²⁸² Telephone Interview with Charlie Babbitt, *supra* note 95.

²⁸³ Telephone Interview with Seth Linton, *supra* note 115.

²⁸⁴ Interview with Jamie Baker Roskie, *supra* note 113.

Several participants identified variations of the value of good problem-solving.²⁸⁵ Jamie Baker Roskie said that when she graduated from law school, she “knew that lawyers needed to be good problem solvers.”²⁸⁶ She now understands that to include “having a certain elasticity of mind,” which includes “listening and investigation, and not pre-judging a situation, but really trying to take a broad view.”²⁸⁷

Seth Linton described it as the “ability to clearly perceive” and then to be able to “detect and discern the root or solution or path most compatible with a more positive outcome for the concerned parties”²⁸⁸ Richard Power described it as a “sense of skepticism” that makes a lawyer double check things and avoid making assumptions.²⁸⁹

For Michael Zimmerman, problem solving requires a lawyer to “resolve . . . [a] client’s conflict in a way that feels fair and does not unduly prolong or aggravate conflict. . . . [E]ven though we function in an environment laden with conflict, the optimal state for our client is not to be in conflict.”²⁹⁰

Participants rounded out the list with values including: willingness to work hard,²⁹¹ balance,²⁹² zealousness,²⁹³ following through with commitments,²⁹⁴ and maintaining one’s value system despite countervailing pressures.²⁹⁵

G. Lawyerly Practice as a Buddhist Practice

I asked every participant to give me specific examples of the ways in which they brought their Buddhist or contemplative practices into their lawyering. One set of examples involves the way in which participants use their Buddhist practice as a way to keep some equilibrium while they practice.

²⁸⁵ *Id.*; Telephone Interview with Tonya Kowalski, *supra* note 94; Telephone Interview with Seth Linton, *supra* note 115; Telephone Interview with Michael Zimmerman, *supra* note 98; Telephone Interview with David Zlotnick, *supra* note 107.

²⁸⁶ Interview with Jamie Baker Roskie, *supra* note 113.

²⁸⁷ *Id.*

²⁸⁸ Telephone Interview with Seth Linton, *supra* note 115.

²⁸⁹ Telephone Interview with Richard Power, *supra* note 101.

²⁹⁰ Telephone Interview with Michael Zimmerman, *supra* note 98.

²⁹¹ Telephone Interview with Sarah Weller, *supra* note 119.

²⁹² Telephone Interview with Susan Busby, *supra* note 56.

²⁹³ Telephone Interview with Karen Mendenhall, *supra* note 104.

²⁹⁴ Telephone Interview with Michael Zimmerman, *supra* note 98.

²⁹⁵ Telephone Interview with David Zlotnick, *supra* note 107.

For example, when I asked Bill Meyers if he thought his contemplative practice helped him be a better lawyer, he responded, “Sure, I think it makes me a better attorney to meditate. I think it just makes your mind work better. I think it slows you down and makes you less . . . reactionary. I think that helps you no matter what, for practice in whatever profession you’re in.”²⁹⁶ Karen Mendenhall described a similar overall benefit to her lawyering practice:

I think what has been influenced by my Buddhist practice is . . . the assurance, or the way to keep things on an even balanced scale so that I, being a lawyer, can do work that would make some people very angry all the time To me, it just helps with the balance, with the equanimity.²⁹⁷

Michael Zimmerman noted that a Buddhist practice does not mean that one is free from strong emotions that lawyering can trigger, like anger.²⁹⁸ Instead, the practice allows one to note when the emotion is ascending. As Michael described it, “There are certainly occasions in practice when I find myself getting cranked off and then I’ll start, I’ll all of a sudden shift perspective and watch Michael get cranked up and laugh at him, you know [T]o do that is to immediately dispel it.”²⁹⁹

In addition to general equanimity, Charlie Babbitt gave an example of a recent, specific event for which he had used his contemplative practice to reinforce an overall sense of calm. Charlie had a jury trial in which “each day was really contentious and high stress.”³⁰⁰ He explained, “I felt like being able to have some perspective on it in advance [by meditation] really helped keep my heart-rate down, kept my palms from sweating, and I spoke slowly”³⁰¹

Participants often gave examples of how they integrate their Buddhist practice into the ways they work with clients. For several of the litigators, there was a shared sense that their Buddhist practices made them better advocates and advisors for their clients. Mary Zachar said

²⁹⁶ Telephone Interview with Bill Meyers, *supra* note 97.

²⁹⁷ Telephone Interview with Karen Mendenhall, *supra* note 104.

²⁹⁸ Telephone Interview with Michael Zimmerman, *supra* note 98.

²⁹⁹ *Id.*

³⁰⁰ Telephone Interview with Charlie Babbitt, *supra* note 95.

³⁰¹ *Id.*

it very simply, “Being a Buddhist lawyer doesn’t mean you can’t litigate – it’s the way you litigate.”³⁰²

Karen Mendenhall echoed the idea that having a Buddhist practice did not mean she could not press for her clients. As she articulated it, her practice has helped her distinguish between being tenacious and being antagonistic.³⁰³ I asked Karen whether her clients made the same distinction, or whether she had clients for whom antagonism towards the other side is what they expected from her. She recounted one client who wanted her to be “a gotcha lawyer,” and who pressed her in a deposition to be more aggressive in bringing up issues unrelated to the lawsuit.³⁰⁴ Ultimately, the lawsuit settled, but Karen had to navigate the client’s desire for “aggressive” lawyering throughout.³⁰⁵

Michael Zimmerman considered the way his Zen practice has come to bear on his litigation work. As he said:

I have a lot more dispassion about myself, my clients and I think one of the ways that Zen . . . that practice . . . makes you a better lawyer is because it makes you so aware of multiple perspectives and how none of them are entirely right. . . . [A]ll perspectives are true and all are partial.³⁰⁶

Michael returned to that theme later in our interview, noting that not only does a Buddhist practice help a lawyer to “see perspectives more easily,” but it also “de-natures your response. If you’re going to respond with vigor, you’re going to respond with vigor because it’s useful, not because you’re pissed off.”³⁰⁷

Michael was clear, however, to distinguish between “dispassion” and amorality. He said, “I don’t view myself as an amoral gunfighter.”³⁰⁸ Instead, he understands himself to have responsibility to be “an ethical human being overall,” including in his lawyering.³⁰⁹ Michael believes his Buddhist practice has made him “much more sensitive to the limited nature of what people can really get from the legal system,” thus allowing him to have very candid

³⁰² Telephone Interview with Mary Zachar, *supra* note 96.

³⁰³ Telephone Interview with Karen Mendenhall, *supra* note 104.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ Telephone Interview with Michael Zimmerman, *supra* note 98.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

conversations with his clients about the limits of what it is that he (and the law) can accomplish.³¹⁰

I asked Michael a similar question to one I asked Karen – how does he respond to a client who wants an “amoral gunfighter.” He said his usual approach is to engage in a moral conversation with the client, couched in pragmatic terms, along the lines of “I can do that, but that’s really not going to solve your problem. Let’s talk about what your problem is” and whether the law can provide any actual satisfaction.³¹¹ Michael has found that most clients are willing to have such a conversation with him, and that it is rare for a client to insist on an approach that Michael has counseled against.³¹²

Michael pondered the fact that he had practiced law for many years before he came to Buddhism. He wondered whether, just given his length of practice, he would have had the same perspective about a lawyer’s need for dispassion and multiple perspectives. He mused, “I think I would not have had the equanimity that I have [with Zen]. It’s the lack of equanimity that really makes you so attached.”³¹³

Jamie Baker Roskie works with outside experts as part of her Land Use Clinic, and having student attorneys alongside her means she regularly looks to that work to help her teach. She recounted a particular moment with another social justice advocate:

I’m working with a guy in [another department] and he’s an environmental justice advocate and he really wants to man the barricades, so I’m talking with my students about, ok, if that’s anger for anger’s sake, and how is that useful. How do you work with anger, and how do you deal with anger in these situations? When is it useful to create a strong voice and be a strong advocate, and when is it more useful to step back. Both of those two things are valid and have a role, but how do you decide when to use those tools, and how to be practical in the way that you apply all those tools.³¹⁴

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Telephone Interview with Michael Zimmerman, *supra* note 98.

³¹³ *Id.*

³¹⁴ Interview with Jamie Baker Roskie, *supra* note 113.

For Jamie, the conversation with her students about anger was a way of teaching mindfulness, and teaching about being aware when an emotion is in play in lawyering and whether it is useful.³¹⁵

Susan Busby, who specializes in the often-contentious area of family law, recounted that she often remarks to her clients that “no one wants the longest, most expensive case. Most people want the shortest, least expensive case.”³¹⁶ However, she also finds that “a lot of lawyers . . . fan the flames of, especially in this area [family law], people’s indignation and feelings of being a victim.”³¹⁷ Susan noted that clients (and lawyers) are not helped when they view the lawyer as the hero – the person who goes “into the telephone booth and . . . emerge[s] with tights.”³¹⁸ Instead, Susan draws on her Buddhist practice and belief that everyone has wisdom to solve problems, which removes the focus from the lawyer and engages clients and their partners in actively creating a set of solutions. While the process can be very difficult, she finds that “clients have a much better work product at the end because, even if it was tough, they had to put the time in and come up with a solution that would work for both of them.”³¹⁹

Susan also reflected that, in family law, “patience is the greatest virtue.”³²⁰ She noted that the Mahayanist teaching of the “Six Paramitas” includes patience (the other five are generosity, diligence, discipline, wisdom, and meditative stability),³²¹ and, thus, that Buddhist practice is very relevant to her lawyering.³²²

As he considered his work mediating family cases, Seth Linton echoed Susan’s assessment that family law disputes often have emotions at the fore. He noted that watching emotions “rise and fall” in others has become a part of his own Buddhist practice related to impermanence, in that seeing others stuck on an emotion reminds him that it can happen for him as well.³²³ He tries to translate the Buddhist notions of attachment and impermanence in order to help the two people in conflict realize the “aggravating effect” of their focus on emotion.³²⁴

³¹⁵ *Id.*

³¹⁶ Telephone Interview with Susan Busby, *supra* note 56.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ See THICH NHAT HANH, *supra* note 23, at 192-93.

³²² Telephone Interview with Susan Busby, *supra* note 56.

³²³ Telephone Interview with Seth Linton, *supra* note 115.

³²⁴ *Id.*

After describing the above example, Seth noted: “In order to effectively do my job, I really should be doing basically what I’m supposed to be doing for my [Buddhist] practice. So, I’m really lucky.”³²⁵

Tonya Kowalski noted that maintaining equanimity through dispassion and compassion was an important way in which she has been able to preserve professional relationships.³²⁶ Recall that she once work in private practice and now teaches law. In considering both venues, she said:

With abusive clients or opposing counsel (and now occasionally with an angry student), [Buddhist] practice was what helped me to avoid saying or doing something damaging to a professional relationship. In each of the situations, I have just tried to see that the conflict is part of the illusion of separation. The person yelling at me does not see me as a human being at that moment, and is filled with fear and with a drive for polarized, winner-take-all justice. I tend to be seeing them only as an enemy and a threat, and not as a vulnerable person. I try to bring awareness to the body, slow down the breath, and generate compassion, even though my adrenaline is running amok.³²⁷

Charlie Babbitt has not completely harmonized his work as a trial attorney and his Buddhist practice. Charlie used to handle criminal defense, and he pointed to that area as challenging for him. As he said:

Particularly in the criminal context, you end up having to confront a lot of cops. I don’t have any great love for cops, but at the same time, I recognize that a lot of the time they are doing their job, and for the most part are nice guys, and specifically that they are in harm’s way a lot, and that doesn’t relieve me of my obligation in my clients’ interest to make their work look as bad as possible, to make them look as foolish as possible on the stand, and they’ve been pretty gracious about it, all things considered. It’s odd doing that kind of work in a town that is this small because you really see, wow, he’s mad at me, or that was in the paper and everyone is unhappy with him.³²⁸

³²⁵ *Id.*

³²⁶ Telephone Interview with Tonya Kowalski, *supra* note 94.

³²⁷ *Id.*

³²⁸ Telephone Interview with Charlie Babbitt, *supra* note 95.

When I asked Charlie if he believed there was any tension between being a lawyer and a Buddhist, he responded:

I guess I'm still trying to figure that out. A lot of that is in the context of being a lawyer and having been a litigator. Again, you have real countervailing duties. I don't think there's a way to reconcile everything we're asked to do as Buddhists with everything we're asked to do as lawyers.³²⁹

Participants also described a range of examples not involving litigation. Richard Power's work in affordable housing often requires him to participate in negotiations involving several different parties or groups. He noted how his Buddhist practice has encouraged him to be mindful of small details.³³⁰ He described one technique he uses at the opening of a set of negotiations: He will suggest to the group that they all agree to give each other a "get out of jail free" card.³³¹ Then, when tension arises in the negotiations, Richard reminds the group about the "get out of jail free" card as a way of encouraging the group to move beyond the disagreement.³³²

Richard also noted that his Buddhist practice has helped him in his relationships with colleagues at his law firm. In particular, Richard described quarterly meetings of the law partners at which they allocate profits. He recounted that, in advance of the meetings, he often considers a particular metta (lovingkindness) meditation,³³³ which in his colloquial translation says "don't be greedy and don't be greedy and say it's for your family."³³⁴ During the meetings, he uses his meditation practice to help him note his own responses to people in the meeting. Then, in deciding whether to comment or not, he tries to "remember the underlying ethical parameters that [he's] trying to live [his] life by and see if what [he's] saying is consistent with that."³³⁵

Marc Poirier has found his Buddhist practice to be particularly helpful to him as he encounters the dynamics of a law faculty. Like Richard, Marc has found small interventions to

³²⁹ *Id.*

³³⁰ Telephone Interview with Richard Power, *supra* note 101.

³³¹ *Id.*

³³² *Id.*

³³³ *See supra* Part II.B.1.

³³⁴ Telephone Interview with Richard Power, *supra* note 101.

³³⁵ *Id.*

be quite profound. Marc described one such intervention: “So I have done things in faculty meetings, like say ‘I think we should all, it’s just getting unnecessarily heated, and let’s all be silent for sixty seconds and then pick up this conversation,’ – it worked.”³³⁶

When I asked Laura Howe for examples of the ways she has integrated her contemplative practice into her lawyering, she recalled working on a very challenging legal issue. She had been asked to opine how a court would likely rule on a possible case, and discovered in her research that there was no precedent on which to rely.³³⁷ She found herself “stressed out at work” because she could not discern a definitive answer.³³⁸ She called upon her mindfulness practice to help her understand her stress. She recounted:

When I stopped and became aware that . . . [the lack of a clear answer] was what was causing the discomfort, I was able to be much more gentle with myself, and much more compassionate, and realize that this was something beyond my control. There’s no way to predict how a court would decide this specific case because it hasn’t been done yet. That I think actually helped me provide better advice to the client, because I think it’s important to tell your client when things are unpredictable, and I was able to do that instead of trying to say one way or the other.³³⁹

The above experience, coupled with an experience at a lawyers’ retreat at Spirit Rock during which she heard some people describe feeling unable to be empathic with their clients, has made Laura realize that she has the opposite challenge.³⁴⁰ She easily feels empathy and attachment, and, thus, is using her contemplative practice to help cultivate non-attachment, or “dispassion,” to use Michael Zimmerman’s word.³⁴¹

Several of the participants who work in the legal academy have developed courses that integrate their Buddhist practices. Jeannine Woodall offered a meditation class for students at Osgoode Hall.³⁴² She was encouraged to start the class by the Dean of First Year Students, who knew that Jeannine taught yoga. The Dean’s interest in a meditation class was to find a way to

³³⁶ Interview with Marc Poirier, *supra* note 111.

³³⁷ Telephone Interview with Laura Howe, *supra* note 121.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² Telephone Interview with Jeannine Woodall, *supra* note 87.

help students deal with stress. Jeannine described how she introduced law students to the purpose of meditation:

You know, as a lawyer, or as a law student, if you learn how to basically sit down for a few minutes and watch your breath, you'll first of all develop an ability to concentrate better and, you may find that you're able to relax a little bit more, you'll become more aware of your posture, your breathing, which will . . . in turn make you feel more healthy.³⁴³

Jeannine said that the first "myth" she had to dispel in the students was that "by sitting down and being still, you're not doing anything, and that . . . you shouldn't just have time to sit there and not do anything."³⁴⁴ She said that students discovered quickly that "when you actually do try and sit still, it's very hard."³⁴⁵

Jeannine will offer the meditation class again, and is also hoping to offer a course on contemplative practices as part of her law school's "perspective options" curriculum.³⁴⁶

Marc Poirier also hosts a meditation group at his law school. The group was started about three years ago by someone else, but that person did not continue on with it, so Marc has stepped up to organize it.³⁴⁷ Marc notes that he feels his role is not as a teacher for the group, but as a co-participant who has more experience sitting.³⁴⁸

David Zlotnick received a grant from the Center for Contemplative Mind in Society to develop a trial advocacy course that incorporated mindfulness practice.³⁴⁹ The course description tells students that they will learn the traditional areas of such a course, like witness examinations, but goes on to explain:

Unlike other trial advocacy class[es], however, this course will also attempt to integrate the emerging field of "mindfulness" in 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 chaotic and stressful circumstances,

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ Interview with Marc Poirier, *supra* note 111.

³⁴⁸ *Id.*

³⁴⁹ Telephone Interview with David Zlotnick, *supra* note 107.

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 and others so that they can have long and satisfying careers in the courtroom.³⁵⁰

David hopes to teach the course again.³⁵¹

David also talked about the role of nonattachment for him in his teaching and described how he has developed as a teacher since he began a contemplative practice. As he said:

When I first started teaching I wanted the students to be good at being a lawyer, and sometimes was overeager to share what I had learned as a lawyer. . . . If you want to be a good Socratic, interactive teacher, you can't be attached to the answers to your questions or to how quickly the students "get it." If you are, and if you don't get the answer you want, you end up giving a lecture by questioning I had a long talk with a colleague who is . . . new to teaching. . . . He's very passionate about getting the right answer. I said, "why don't you just try to be curious about how their mind works. When you ask them a question, and there's a fifty percent chance they'll get it right and they get it wrong every time, try to be curious about what's the mental process by which they got to the clearly wrong answer." If you can just not be attached to the answer, in the question setting . . . [that's] how I've gotten to be a better classroom teacher [with] . . . this principle of non-attachment.³⁵²

As participants thought about the ways in which they brought their Buddhist practices into their lawyering, several described ways they now look to the mundane parts of their work as an expression of their Buddhist practice.

As noted earlier, Sarah Weller uses her phone ringing as a call for her to be mindful.³⁵³ Jamie Baker Roskie commented that she felt like her training as a lawyer "conditioned [her] to use the left side of [her] brain" so that she was "constantly problem-solving and working."³⁵⁴ As a response, she consciously focuses on her mindfulness practice as she walks up and down

³⁵⁰ Advanced Trial Advocacy: A Mindfulness Approach Course Description (Aug. 23, 2010) (on file with Rutgers University School of Law).

³⁵¹ Telephone Interview with David Zlotnick, *supra* note 107.

³⁵² *Id.*

³⁵³ Telephone Interview with Sarah Weller, *supra* note 119.

³⁵⁴ Interview with Jamie Baker Roskie, *supra* note 113.

the hallways at work.³⁵⁵ In that way, she breaks the habituated, conditioned pattern of thinking which can predominate during her work day.³⁵⁶

Seth Linton reflected that, as an employee of a state judiciary “[t]here’s all this stuff that goes along with being a state worker . . . and that stuff involves paperwork that doesn’t have a whole lot to do with anything, but even with that, there’s a lot of meditational practices involved in staying present in what you’re doing.”³⁵⁷

David Zlotnick devised an exercise for his trial advocacy students to help them think about what their minds did when they engaged in a mundane activity. He gave them each a Sharpie marker and told them to pick a shape and to draw it over and over again for ten minutes.³⁵⁸ He asked them to pay attention to what they thought about while drawing, including noticing when they had drawn their shape a little differently and consciously deciding whether to stay with the variation in shape or not.³⁵⁹ David tied the exercise to a lesson on laying proper foundations for the introduction of evidence. He knew that students generally found that lesson boring and hoped that the Sharpie exercise would help them discover how to “train” their minds to remain present in the face of a tedious task.³⁶⁰

Finally, some of the participants noted that they had found “teachers” for their Buddhist practices among their clients, colleagues, and friends. David Zlotnick’s trial advocacy seminar had twelve students in it. David wanted to make sure that his students did not approach the class as if he were the expert and they were the novices. He told his students at the beginning of the course, “I’m a pretty good trial lawyer, but I’m no better at mindfulness practice than you are.”³⁶¹ He felt that the students accepted that as a starting point, and in the end, David considered all of the students as his teachers as well.³⁶²

Jeannine Woodall described how, as her Buddhist practice developed, she came to see how many teachers surrounded her in her everyday life.³⁶³ As she said, “When I talk to my boss

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ Telephone Interview with Seth Linton, *supra* note 115.

³⁵⁸ Telephone Interview with David Zlotnick, *supra* note 107.

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ Telephone Interview with Jeannine Woodall, *supra* note 87.

now, I see her as a teacher to me. . . . When you practice on this level every being is your lama. So, to shift the perspective like that is very humbling.”³⁶⁴

As Michael Zimmerman laughingly put it, he constantly finds teachers around him: “my spouse, the dog”³⁶⁵

H. Discussions of Buddhist Practice with Client and Colleagues

A prominent concern of scholarship that has been critical of lawyers looking outside of the profession for values on how to practice law has been that a lawyer will replace the professional norms of client autonomy and acquiescence to a client’s choices with one in which the lawyer imposes her or his own personal values on the client.³⁶⁶ Thus, I wondered whether the participants in this project thought it appropriate to talk to clients or colleagues about any interplay between their Buddhist practice and their lawyering.

Consistently, participants responded that they were not overt about such conversations because they did not want to make anyone uncomfortable. A common way that participants would start their answer was to refer to the “separation of church and state.” As Charlie Babbitt put it, “[W]e have this church and state separation, and in polite society, we separate religious life from public life and from professional life. For the most part I think that’s really good, it helps us get along with each other for a long time.”³⁶⁷ However, Charlie also went on to say that one of the reasons he was starting his own practice was to be able to be comfortable about bringing his contemplative practice into the workplace. As he said:

That was a big motivator for me wanting to go out on my own. I wanted to be able to talk about that openly in the office, and if someone came to my desk and I was sitting silently, I don’t want to have to give an excuse for why I was doing that. I don’t want to push anything on anybody, but at the same time I think my Buddhist practice gives me certain tools that make me a more effective attorney, I always felt like I had to keep things camouflaged, in the closet. . . . But going forward, what I’d like to do is

³⁶⁴ *Id.*

³⁶⁵ Telephone Interview with Michael Zimmerman, *supra* note 98.

³⁶⁶ *See, e.g.*, Spaulding, *supra* note 3; Levinson, *supra* note 3, at 1604-05.

³⁶⁷ Telephone Interview with Charlie Babbitt, *supra* note 95.

make that a part of my brand. If people want me, they want me, and if they don't, they don't.³⁶⁸

For Seth Linton, using the phrase “separation of church and state” was his shorthand for wanting to take great care, as an employee within a judicial system, that disputants working with him feel he is impartial.³⁶⁹ He noted that when disputants meet with him, they look around the meeting room for cues about him, sometimes as a way to try and establish some shared affinity. As he put it, trying to figure out if he and the disputant “went to the same high school.”³⁷⁰

Karen Mendenhall said she has found that, generally in society, discussions about religion are often “more divisive than inclusive.”³⁷¹ Thus, she neither discusses her Buddhist practice with clients or opposing counsel, nor expects them to raise such a conversation with her.³⁷²

Susan Busby also highlighted that people can be uncomfortable speaking about religion. When she is giving advice to a client, and the advice is informed by her Buddhist practice, she noted that:

I usually say “in my experience” because, frankly, I could be Christian, and if it comes out of my experience, then I'm just sharing what I've learned about how, either the world works or my mind works or how people react to different things. So, it's again more from experience. . . . [S]ometimes using that [religious] language, I don't know how you know each person in any moment could react to it.³⁷³

Michael Zimmerman concurred that he is conscious about how he describes what might be Buddhist ideas when he is giving advice to his clients. He said, “I certainly don't use Zen language. . . . I certainly don't use foreign terms.”³⁷⁴ But, he continued, “I'm so deeply embedded [in Zen] at this point and imbued with the Zen perspective that that's what underlies

³⁶⁸ *Id.*

³⁶⁹ Telephone Interview with Seth Linton, *supra* note 115.

³⁷⁰ *Id.*

³⁷¹ Telephone Interview with Karen Mendenhall, *supra* note 104.

³⁷² *Id.*

³⁷³ Telephone Interview with Susan Busby, *supra* note 56.

³⁷⁴ Telephone Interview with Michael Zimmerman, *supra* note 98.

what I am telling people.”³⁷⁵ He gave the example of talking with a client about attachment to a perspective and how he will talk about “getting yourself stuck in an idea.”³⁷⁶

Jeannine Woodall, in reflecting about the meditation class she offers, said that she describes it to students and colleagues in a very generic way. She does not refer to Buddhist-specific meditation practices because, as she said, “I don’t want, in that environment, to make people feel like they have to be a Buddhist to receive the benefits of meditation.”³⁷⁷ She is more than happy to have students attend with any number of motivations.³⁷⁸

Marc Poirier handles his meditation class in a similar vein. As he said, “I’m happy to talk about stress reduction.”³⁷⁹ He further recollected, “I talk more about yoga [with my students] than I do about Buddhism – because I think it’s more accessible without being threatening to my students. It seems to me like proselytizing and . . . I don’t want to do it.”³⁸⁰

Like Jeannine and Marc, David Zlotnick said he was happy to have students motivated to take his trial advocacy course for different reasons.³⁸¹ Certainly his students understood in advance that they would need to be willing to try mindfulness techniques, and David tried to make sure students learned some of the history and traditions behind mindfulness.³⁸² Nonetheless, David was circumspect about bringing his own commitments to Buddhism into his teaching. As he said, “Just like I won’t force politics on my students, I don’t want to force my personal beliefs on them.”³⁸³

Tonya Kowalski agreed with the above, describing the way in which she talks about contemplative practices with her students like this:

Sometimes I’ll talk about stress reduction techniques with my students, but I do so from a physical perspective because I don’t want to alienate people with different world views, particularly because I am in a position of trust with respect to my students. They depend on me and they need to know that I am treating everyone fairly and that I am not going to judge them for having different views. Even more immediately, removing the

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ Telephone Interview with Jeannine Woodall, *supra* note 87.

³⁷⁸ *Id.*

³⁷⁹ Interview with Marc Poirier, *supra* note 111.

³⁸⁰ *Id.*

³⁸¹ Telephone Interview with David Zlotnick, *supra* note 107.

³⁸² *Id.* See Advanced Trial Advocacy: A Mindfulness Approach Course Description, *supra* note 350.

³⁸³ Telephone Interview with David Zlotnick, *supra* note 107.

Buddhist filter takes my ego out of it and makes it about accessibility for the student rather than about my dispensation of some tidbit of enlightenment.³⁸⁴

Many participants expressed their sense that the legal profession is a particularly challenging place in which to talk about religious or spiritual practices. Seth Linton's comments were typical. In observing that the lawyers in his state did not really talk about religion, Seth hypothesized:

I don't know this, but anecdotally, it seems as though many in the legal profession and the bar view belief or religion as a sort of weakness, not necessarily a bad thing, but something that you resort to in dark and stormy weather or at the death of a loved one, rather than a daily matter in good times.³⁸⁵

Laura Howe thought about the legal profession's discomfort with religion in terms of broader affiliations. As she described it:

I do think that lawyers are part of this professional class, where there are stereotypes and assumptions where we are expected to have a certain education and lifestyle—the yuppie lifestyle. I think that stereotype doesn't include spirituality or religious practices. The yuppie or urban professional lives a very secular life.³⁸⁶

Bill Meyers, though, considered that lawyers might find religion challenging in part because of their lawyerly training. As he thought about why lawyers might be challenged, he noted:

I think there might be a few things that push in that direction. I think one is being careful about precision and the language that is used. I think another thing [may be that lawyers] are less inclined to accept things based on just authority. I think probably because of those two things that religion may be a more complicated issue for attorneys, as compared to the rest of society.³⁸⁷

³⁸⁴ Telephone Interview with Tonya Kowalski, *supra* note 94.

³⁸⁵ Telephone Interview with Seth Linton, *supra* note 115.

³⁸⁶ Telephone Interview with Laura Howe, *supra* note 121.

³⁸⁷ Telephone Interview with Bill Meyers, *supra* note 97.

For Michael Zimmerman, his comfort with disclosing his Buddhist practice has changed over time. As he described it: “When I came to [a meditative] practice, I actually tried to conceal what I was doing because I had just become chief justice. . . . I thought my credibility would be undermined if people thought I was doing something that seemed a little weird.”³⁸⁸ But as he developed his Zen practice, there were many ways that people could learn of his commitment. For example, he began shaving his head when he took monk’s vows and when asked why, he would disclose his Zen practice.³⁸⁹ Additionally, his meditation classes are listed in a local paper, and he and his wife have taught contemplative practice classes at bar conventions.³⁹⁰ Now, he is no longer concerned with keeping his Zen practice from others in the legal profession.

For Jamie Baker Roskie, she has found a general reluctance about religion in the legal academy, but with a slight twist. One of her colleagues is a Christian, and Jamie’s sense is that he is “from the evangelical tradition of serving the poor . . . and he is very clear about his Christianity without trying to convert anybody or impose it on anybody.”³⁹¹ She has found that colleague to be a useful barometer, and as she says, “I figure as long as I sort of follow [my colleague’s] example, being very transparent with people without trying to impose it on people, I think they [my other colleagues] are okay with that”³⁹²

David Zlotnick has found his law school colleagues to be supportive, but slightly bemused about his contemplative practice. David described a day when he had decided to follow a particular mindfulness practice and not speak about anyone who is not present for the conversation.³⁹³ He went to lunch with colleagues who started to speak about another person, and David declined to participate. One of the colleagues knew about his Buddhist studies and started to tease him, saying “Buddha, Buddha, Buddha” every time he declined to speak about someone not present.³⁹⁴ The teasing was good-natured, not intended to be malicious, and

³⁸⁸ Telephone Interview with Michael Zimmerman, *supra* note 98.

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ Interview with Jamie Baker Roskie, *supra* note 113.

³⁹² *Id.*

³⁹³ Telephone Interview with David Zlotnick, *supra* note 107.

³⁹⁴ *Id.*

continues to this day.³⁹⁵ David laughed heartily when he recounted the story, noting that the teasing reminds him not to be too attached to a particular idea at any one time.³⁹⁶

I. Interplay Between Buddhist Practice and the Rules of Professional Conduct

A final area explored with every participant was whether the participant thought there was consonance or dissonance (or neither) between the participant's Buddhist practice and the Rules of Professional Conduct.³⁹⁷

As noted earlier, Charlie Babbitt expressed a more general concern that sometimes zealous lawyering, especially in the context of litigation or criminal defense, called on him to treat others in a way that was inconsistent with his Buddhist practice. After recounting the tension he felt when cross-examining a cop in a criminal case, he noted with some relief that the cops "have been pretty gracious about it, all things considered."³⁹⁸

Mary Zachar noted that she experienced a tension similar to Charlie's when she was a juvenile defender.³⁹⁹ She encountered a robust form of the adversary system in which each person's role was strictly defined, and which cultivated distrust and opacity.⁴⁰⁰ While she tried to bring Buddhist practices like openness into her work, she felt the juvenile defender system remained entrenched in adversariness.⁴⁰¹

Richard Power had a fairly unique vantage point for considering the interplay between the Rules and his Buddhist practice. As described earlier, Richard spent time both as a prosecutor and as a civil litigator before building his current transactional-focused practice in affordable housing. Regarding his career path, Richard said, "I've deliberately structured my legal practice and all that as a way to get out of the emergency room, and, if you will, to get into

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ In my interviews, I referred to the "Rules of Professional Conduct," expecting that each participant would consider those Rules adopted by the state in which she or he was licensed to practice. No participant referred to specific rules by number (*i.e.*, Rule 1.6). Rather, all of the participants talked more generally about concepts like "confidentiality" or "zealousness."

³⁹⁸ Telephone Interview with Charlie Babbitt, *supra* note 95.

³⁹⁹ Telephone Interview with Mary Zachar, *supra* note 96.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

the maternity part of the hospital and be productive with my professional life.”⁴⁰² In response, I asked him whether he thought he could work as a prosecutor or civil litigator again. Richard pondered the questions and then, as to prosecution, answered:

I think I would try and listen more. To everybody. In talking with the jury, I would, I think I would be better at putting myself in the jurors’ shoes and trying to think about what, speaking to them from a perspective that takes more into consideration how they must be feeling, pulled into the system, thrown in this box.⁴⁰³

As to litigation, he responded: “I always thought of litigation before this as improvisational theater, in which the role of at least one of the other characters was to have you blow your lines. I think I would bring a broader perspective to it, more aware of the other players.”⁴⁰⁴ Richard further noted that his Buddhist practice did not mean he could not hold people accountable for misbehavior. He reflected that his Buddhist practices of compassion and lovingkindness allow him to “understand[] that while people mean well and try to do better, they screwed up . . . and it does them a disservice to say, ‘well, that’s okay.’ Sometimes it’s not okay.”⁴⁰⁵ Asking people to be fully responsible for their actions is entirely consistent with Richard’s Buddhist practice.⁴⁰⁶

For Seth Linton, there was a general consistency between the Rules and his Buddhist practice. However, he felt that the Rules could more accurately be described as setting minimum acceptable standards, while his Buddhist practice sometimes called for more.⁴⁰⁷ Seth translated that into an example of a court administrative guideline about what information Seth and his counterparts should include in custody evaluation reports.⁴⁰⁸ In the past, the counselors in some offices prepared written reports for the parties before they went to court.⁴⁰⁹ In other offices, the counselors simply gave oral reports to the parties before court.⁴¹⁰ In order to create consistency between offices, the administration asked counselors to prepare abridged written

⁴⁰² Telephone Interview with Richard Power, *supra* note 101.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ Telephone Interview with Seth Linton, *supra* note 115.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

reports for the parties.⁴¹¹ Seth, however, believes that the full written reports were more in line with his Buddhist practices of openness and transparency.⁴¹²

Sarah Weller echoed the notion that the Rules were written in such a way as to accommodate a wide range of behavior. For her, there was no conflict between the Rules of Professional Conduct and her contemplative practice. However, she did worry that there was room for lawyers to “not interpret [the Rules] wisely.”⁴¹³

The participants also gave examples of where they found agreement between the Rules of Professional Conduct and their Buddhist or contemplative practices. For example, Karen Mendenhall remarked:

But I think what I like about the Rules, and this seems to be very consistent with Buddhist philosophy, is that you are transparent, you tell people what’s going on, you don’t say one thing and then do another, you don’t form improper alliances, if you’re going to represent two people and they may have slightly divergent interests, you need to get permission to do that.⁴¹⁴

Both David Zlotnick and Michael Zimmerman considered my question in an overall way and saw harmony between the Rules and their Buddhist practices. As David said, “I think in the end our job is to be counselors, and most of the time, almost all of the time, being a good person is consistent with giving good advice to people.”⁴¹⁵ Michael reflected:

You know if we [Buddhists] really believe that the cause of suffering is that we want the world to be a way that it isn’t, how can that not overflow into your practice? How can that not make you more of a counselor and more of a realistic . . . counselor for your clients and for people on the other side?⁴¹⁶

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ Telephone Interview with Sarah Weller, *supra* note 119.

⁴¹⁴ Telephone Interview with Karen Mendenhall, *supra* note 104.

⁴¹⁵ Telephone Interview with David Zlotnick, *supra* note 107.

⁴¹⁶ Telephone Interview with Michael Zimmerman, *supra* note 98.

V. REFLECTIONS ON THE INTERVIEWS

When one spends a good deal of time talking with a small group of people, both individually and collectively, the distance between interviewer and interviewee can shorten. It can shorten even though the interviewer enters the project committed to maintaining distance or separateness from the interviewees. For researchers, then, one starting question is; in what way does the researcher hope to engage project participants, for what purpose, and with what skillfulness?

At the outset of this project, I eschewed the goal of distance. I had hoped that I would be able to engage deeply and profoundly with the interviewees, despite the challenges posed by meeting many of them only by phone and e-mail. My hope in so engaging was rooted in the Buddhist notion of interdependence – that it would be a false perception of my project to see myself as separate, apart, and independent from any of the interviewees, or they from each other, or all of us from some larger community. I also embraced the Buddhist call for equanimity or non-attachment. Thus, while I hoped to deeply and profoundly engage with interviewees, I tried throughout to listen to each interviewee’s narrative without a desire that they provide any particular answer.⁴¹⁷

As a result of my commitments to interdependence and equanimity, I will reflect in the first person on the interviewees’ stories. In drawing out themes from the interviews, I will try to be transparent about my *a priori* expectations.

⁴¹⁷ I expect that researchers coming from a positivist tradition in qualitative research may object to my approach. See generally Norman K. Denzin & Yvonna S. Lincoln, *Introduction: Entering the Field of Qualitative Research*, in HANDBOOK OF QUALITATIVE RESEARCH 1 (Norman K. Denzin & Yvonna S. Lincoln eds., 1994) (delineating historical roots of positivist tradition). However, this project is grounded in a different tradition in which researchers are understood to be obligated to monitor their own reactions and interactions with their projects. See generally Michelle Fine, *Working the Hyphens: Reinventing the Self and Other in Qualitative Research*, in HANDBOOK OF QUALITATIVE RESEARCH, *supra*, at 70.

A. Observations of the Expected

1. American Buddhist Lawyers as American Buddhists

Even though there were only fifteen lawyers who participated in my project, I had expected that their experiences as Buddhists in America would reflect the general patterns noted in earlier research by American Buddhist scholars.⁴¹⁸ More particularly, I expected that the lawyers would be American convert Buddhists, would focus heavily on contemplative practices, and would blur distinctions between monastic life and law life. Such was the case.

As noted earlier, all fifteen participants came to Buddhism either from a relatively secular childhood, or having had varying degrees of experience with Christianity or Judaism. While a few learned about Buddhism as children, none were raised in households in which Buddhism was practiced.

All of the participants noted that they had a contemplative practice. Further, their descriptions, including some expressing worries about whether they had a sufficiently consistent contemplative practice, illustrated that a contemplative practice was a core feature of their commitment to Buddhism.

Finally, all of the participants are integrating their Buddhist practices and their “householder” lives. None of the participants expressed any worry that maintaining a life in the regular world would preclude her or him from pursuing a productive Buddhist practice. Participants did note that demands of the regular world could make it challenging to find time for Buddhist practices, whether sitting or maintaining equanimity. Nonetheless, no participant said that living as a householder instead of as a monastic precluded a productive practice. Michael Zimmerman is a particularly notable example, having been ordained as a monk (along with his wife), then continuing to practice law fulltime and teach in his Zen order.

2. Buddhist Lawyers Can Be as Qualmish as Other Lawyers About Religion

I expected that project participants would express a range of feelings about whether they were comfortable talking about their Buddhist practices with clients and colleagues. I also

⁴¹⁸ See *supra* Part II.A.

expected that participants might talk about commitments in tension. Specifically, I thought they might talk about a commitment to make others feel comfortable in conversations by avoiding explicit references to religion being in tension with a commitment to be transparent with others about the importance of one's own religious practices. My expectations were based on both my own personal experience in the legal profession and on the numerous descriptions by law and religion scholars describing such discomforts.⁴¹⁹ Again, I was not surprised by what I heard in the interviews.

Participants described being fairly circumspect when they approached conversations regarding their Buddhist practices in work-related settings. They articulated the two commitments that I had expected. First, they wished to respect value pluralism and religious pluralism. Thus, when using a Buddhist practice in their lawyering, participants would generally describe what they were doing without labeling it as a Buddhist practice. Several participants noted some reluctance about discussing their Buddhist practices with work colleagues because of a worry that colleagues would disapprove. Second, participants strived to be transparent about their own commitments to Buddhism. They said that if a conversation developed in a way that required them to talk about their Buddhist practice, then they did.

Participants were unhesitating in their assessment that they are better lawyers because of their Buddhist practices. They were equally clear that they do not want to make a client, or others with whom they work, uncomfortable or excluded by uninvited conversations about spirituality or religion. As described earlier, the shorthand participants used to describe their reluctance was keeping church and state separate. I understood participants not to be referring to actual constitutional doctrine, but to the idea that, in a society in which value pluralism and spiritual pluralism exist, one should be mindful and respectful of differing values or spiritual commitments. For example, Susan Busby explained that she often uses the phrase "in my experience" to signal her specific perspective, but also to make the listener feel equally comfortable in offering the listener's own "experience" as relevant to the conversation.⁴²⁰

⁴¹⁹ See Shaffer, *supra* note 4, at 252; Thomas L. Shaffer, *A Lesson from Trollope for Counselors at Law*, 35 WASH. & LEE L. REV. 727 (1978); THOMAS L. SHAFFER, ON BEING A CHRISTIAN LAWYER: LAW FOR THE INNOCENT (1981); Pearce, *supra* note 4, at 1613 ; Russell G. Pearce, *The Jewish Lawyer's Question*, 27 TEX. TECH L. REV. 1259 (1996); Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering's Second Wave*, 21 J. L. & RELIGION 269, 274 (2005-06).

⁴²⁰ Telephone Interview with Susan Busby, *supra* note 56.

However, should a client or colleague inquire about why a participant holds a certain perspective, or some other question about value systems or spiritual beliefs, participants said they are comfortable about disclosing their Buddhist practices. For example, Michael Zimmerman described how people would ask him why he shaved his head, and that the question would lead him to talk about his commitments as a Zen monk.⁴²¹ Susan Busby described meeting a client for the first time, during which the client said to Susan, “There is something different about you.” In response, Susan first asked the client what she thought was different, and then offered to the client that Susan thought it important to present herself as a whole person, mentioning the fact that she had just returned after receiving two weeks of teaching from His Holiness the Dalai Lama and His Holiness the Karmapa.⁴²²

The teachers in the group followed the same tactics as the practicing lawyers. For example, Jeannine Woodall, Marc Poirier, and David Zlotnick each teach a class in which they demonstrate Buddhist practices that they use – Jeannine and Marc in meditation classes and David in his trial advocacy class. However, they introduce the practices as specific techniques related to breathing, or posture, or being aware of the activities of the brain. Each of them takes this approach as a way to make their teaching as accessible and comfortable to as many students as possible, regardless of students’ spiritual backgrounds or commitments. That does not mean they restrict themselves to secular descriptions. For example, David’s course description explicitly mentions that some of the mindfulness practices that he will use come from Buddhism.⁴²³ But, it does mean they try to be very clear with students that holding particular spiritual beliefs is not a prerequisite for being engaged with course materials or activities.

3. Participants Strongly Believed That Their Buddhist Practices Make Them Better Lawyers

I expected the participants to say that their Buddhist practices make them better lawyers. I expected that in part because of my selection process. My solicitation asked for lawyer volunteers who consider themselves to be Buddhist. Recall that Buddhism’s Fourth Noble

⁴²¹ Telephone Interview with Michael Zimmerman, *supra* note 98.

⁴²² Telephone Interview with Susan Busby, *supra* note 56.

⁴²³ Trial Advocacy: A Mindfulness Approach Course Description, *supra* note 350.

Truth is the Eightfold Path, and the Eightfold Path is a practicum for daily living.⁴²⁴ It includes practice in areas such as Right Speech, Right Conduct, and Right Livelihood. Thus, I would expect a Buddhist to bring her practice to bear on her daily activities as a lawyer. If such a Buddhist practice proved unhelpful to lawyering, then it would not be surprising for a lawyer to stop pursuing a Buddhist practice. Since my solicitation did not ask for lawyers who had tried a Buddhist practice, but not continued with it, I expected to hear from only those lawyers who believed their lawyering had benefitted from their Buddhist practice.

There was remarkable regularity in the ways in which participants described how they thought their Buddhist practices connect with the way they practice law. Everyone noted that one of the most important ways their Buddhist practices come into play is through equanimity – some sense that they are able to step back from a particular moment and observe with some dispassion what is going on. Michael Zimmerman described laughing at himself when he started to get angry.⁴²⁵ Seth Linton noted how he observed the rise and fall of emotions, his and the parties', during mediation.⁴²⁶ Marc Poirier described asking his faculty colleagues to stop a conversation and be silent for sixty seconds.⁴²⁷

Participants were clear that equanimity makes them better lawyers. They are able to see multiple perspectives more accurately and thoroughly. They are able to sympathize with, and understand the interests not only of clients, but of other parties, opposing counsel, and the like. They are generally able to translate that equanimity to their clients in a way that maintains the client's trust, but also encourages the client to take a full perspective as well. But for some clients, translating equanimity can be more challenging. As Karen Mendenhall described it, some clients need to be encouraged to see a difference between an attorney being aggressive and an attorney being tenacious.⁴²⁸

Participants also looked to equanimity in smaller ways. Recall Charlie Babbitt describing trying to talk slower and keep his palms from sweating during a recent trial.⁴²⁹ Bill Meyers noted relying on equanimity in a similar experience – during depositions when

⁴²⁴ See *supra* Part II.B.1.

⁴²⁵ Telephone Interview with Michael Zimmerman, *supra* note 98.

⁴²⁶ Telephone Interview with Seth Linton, *supra* note 115.

⁴²⁷ Interview with Marc Poirier, *supra* note 111.

⁴²⁸ Telephone Interview with Karen Mendenhall, *supra* note 104.

⁴²⁹ Telephone Interview with Charlie Babbitt, *supra* note 95.

opposing counsel becomes hostile, Bill has found his contemplative practice has made it easier for him not to be drawn in, or intimidated by, that hostility.⁴³⁰

Participants were also clear on a corollary – they are not always perfect at maintaining equanimity. It was common during my conversations with participants that a person would give an example of a way in which she or he had maintained equanimity and immediately follow that example with some qualifying remark, such as “at least I try to.”⁴³¹ I understood participants to be reflecting two points. First, that the practice of equanimity is challenging, and comes with both successes and failures. Second, that part of the appeal of Buddhism is, as Michael Zimmerman put it, that it is as much about “practice” as anything.⁴³² Thus, any one success or failure, as a static moment, is both irrelevant and inaccurate. All moments change into the next, so what becomes relevant is a steady commitment to practice.

The ethos expressed by the participants towards their practices was one of humility as opposed to expertise. As detailed earlier, it was common for participants to describe finding “teachers” all around them – David Zlotnick looking to his students, Jeannine Woodall to work colleagues, or Michael Zimmerman to his spouse and their dog. Participants acknowledged that they, as attorneys, might have some specialized, expert learning, but participants did not treat their expert learning as creating a hierarchy in which they are expected to impose their knowledge onto a client, or student, or colleague.

Along with equanimity, participants consistently noted that their Buddhist practices related to compassion are an important part of their lawyering. Participants connected equanimity and compassion in that they often described their ability to step back from a situation as providing them with the space in which to feel compassion. Recall Michael Zimmerman’s comment that as an arbitrator, his ability to notice when parties were stuck on a position prompted him to feel compassion.⁴³³

The ways in which participants described compassion made it clear that they were not referring to a sentimentalized feeling or to pity. Instead, their descriptions suggested that compassion is a capacity to observe the discomfort of another and to hope to respond in a way that would help the other move towards equanimity as well. Think about Richard Power’s

⁴³⁰ Telephone Interview with Bill Meyers *supra* note 97.

⁴³¹ *See, e.g.*, Telephone Interview with Richard Power, *supra* note 101.

⁴³² Telephone Interview with Michael Zimmerman, *supra* note 98.

⁴³³ *Id.*

example of the “get out of jail free” card, and the way he used it when conversations got heated as a reminder for conversants to step back from disagreements in order to find common ground.⁴³⁴ Similarly, recall Tonya Kowalski’s comment that when she is interacting with someone who is very upset at her, she tries to project compassion towards that person both as a way of both keeping her own equanimity and as a way of eliciting equanimity in return.⁴³⁵

One of the ways in which I thought I might hear a Buddhist lawyer speak about her or his practice of compassion was through socially-engaged work. Recall that in some Mahayanist schools, like Tiep Hien, the Bodhisattva ideal has been translated into a call for social engagement, which often can be expressed through compassionate practices.⁴³⁶ For example, the Thirteenth Mindfulness Practice from the Tiep Hien Order asks a person to commit to the following:

Aware of the suffering caused by exploitation, social injustice, stealing, and oppression, we are committed to cultivating loving-kindness and learning ways to work for the well-being of people, animals, plants and minerals. We will practice generosity by sharing our time, energy, and material resources with those who are in need. We are determined not to steal and not to possess anything that should belong to others. We will respect the property of others, but will try to prevent others from profiting from human suffering or the suffering of other beings.⁴³⁷

Before starting my interviews, I hypothesized that a Buddhist lawyer who practiced in a setting typically considered to be public interest lawyering or cause lawyering might speak about her or his choice of legal practice as a way through which she or he expressed compassion. However, none of the participants in this project currently work in traditional public interest law settings, even though some have done so earlier in their careers.⁴³⁸

⁴³⁴ Telephone Interview with Richard Power, *supra* note 101.

⁴³⁵ Telephone Interview with Tonya Kowalski, *supra* note 94.

⁴³⁶ See *supra* Part II.B.3.

⁴³⁷ THICH NHAT HANH, *supra* note 80, at 155-56.

⁴³⁸ Richard Power started his career in legal services and Sarah Weller received a public interest fellowship after she graduated, and had returned to that public interest organization for several years before moving into her current job. Telephone Interview with Richard Power, *supra* note 101; Telephone Interview with Sarah Weller, *supra* note 119.

Jamie Baker Roskie, however, has a closely-related practice with her Land Use Clinic. The clinic focuses on policy work, but it also handles some environmental justice work.⁴³⁹ The environmental justice work places Jamie and her students into the community, where, as Jamie described, it is “mostly women in an African-American and Latino neighborhood that’s been heavily affected by industrial pollution.”⁴⁴⁰ Jamie talked about how important it is to her to be able to be a consistent, supportive resource for a group of women who have “been fighting this [environmental justice] battle for thirty years, and they’re exhausted, and they feel like they’ve tried everything.”⁴⁴¹ Like other participants, in describing ways in which she expresses compassion towards the group of women, Jamie tied that into a practice of equanimity. As she recounted about her mindfulness practice, “[It is] also the way that I do not get sucked down into that vortex myself, and to really be able to be a continually good advocate for that neighborhood group.”⁴⁴²

I did not ask participants if they felt that they would not be good lawyers without their Buddhist practice. Put another way, I did not ask, “Is a Buddhist practice the only way to become a good lawyer?” However, I think participants would have answered that question with a “no.” Michael Zimmerman suggested such an answer when he talked about the fact that he had been a lawyer and a judge for a long time before he came to Buddhism, and he already had a sense of “the law” as an incomplete system for resolving people’s perceived problems.⁴⁴³ Thus, he felt that he was already able to present a broader perspective about problem-solving with the law. Nonetheless, he was certain that his Zen practice had heightened and solidified his capacities as a lawyer.⁴⁴⁴

I think the fact that participants did not see Buddhism as the exclusive way to become a good lawyer relates to participants’ understanding of Buddhism as grounded on direct experience. Since everyone has direct experiences, everyone has the material from which to derive learning. A non-Buddhist lawyer could find a non-Buddhist method for perceiving and distilling her direct experiences in a way that encourages her to develop into a lawyer who practices with equanimity, compassion and lovingkindness.

⁴³⁹ Interview with Jamie Baker Roskie, *supra* note 113.

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ Telephone Interview with Michael Zimmerman, *supra* note 98.

⁴⁴⁴ *Id.*

For example, a lawyer steeped in a humanist tradition might practice law in a way that looks like the lawyering of the participants in this project. Similarly, lawyers from other faith traditions have described a commitment to lawyering flowing from their own traditions that looks very much like the lawyering described by participants.⁴⁴⁵ Finally, there are lawyers who have embraced a secular contemplative practice with the hope that it will enable them to be better lawyers along the same dimensions as those described by the participants in this project.⁴⁴⁶

I expect that the participants would be quite sanguine about the fact that good lawyering emanates from multiple methods. Participants had no commitment to Buddhism being the exclusive path to good lawyering, only a commitment to Buddhism being an effective path for themselves. Further, they were cheerful about others trying the path for narrower reasons, like stress reduction.

B. Observations of the Unexpected

1. Buddhist Lawyers Practice in a Range of Settings and Are Not Congregated in Any Particular Practice Area

As I talked with lawyers and colleagues about my project to find Buddhist lawyers across America and interview them, I heard a common speculation – that my interview group would be monopolized by lawyers focused on alternative dispute resolution. I did not inquire about the reasons behind the speculation, but speculated myself that the speaker believed the following: there was no way for a Buddhist lawyer to successfully litigate, or work in the criminal system, that would not also require her to violate a basic precept of Buddhism. Thus, Buddhist lawyers would opt for areas of legal practice that called for collaboration because such work gave them more opportunities to utilize their Buddhist practices. In other words, I suspected that the speakers believed two related notions about the legal system. First, that the way in which lawyers are required (or ought to be required) to “fight” in the legal system is a way that does not tolerate a lawyer who considers interests beyond those of her client. A

⁴⁴⁵ See, e.g., THOMAS L. SHAFFER, *supra* note 419; Russell G. Pearce, *supra* note 4.

⁴⁴⁶ See, e.g., STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (2002).

“good” lawyer fights for her client even if it means another’s interest is trumped. Second, that Buddhist practices related to interdependence and compassion are antithetical to “fighting” and, thus, Buddhist lawyers could only be “good” lawyers if they worked in practice settings related to conciliation.

My own *a priori* hypothesis was very different. I believed I would find Buddhist lawyers across all legal practice areas. I thought that for two reasons. First, very practically, I expected that it was more likely that participants would be convert Buddhists, coming to Buddhism as adults. Therefore, I expected many of them already to be lawyers at the time they began their Buddhist practice and that Buddhism thus would not have been a relevant factor at the time a participant decided what kind of law to practice. Second, research and scholarship on the legal profession makes clear that there are ways to litigate and work within disputes that do not require a lawyer to be an amoral hired gun, doing all asked by the client.⁴⁴⁷ I expected that Buddhist lawyers who litigated, or who worked in the criminal justice system, would also reject hired-gun practice, and strive to practice law in a way consistent with their Buddhist practices.

The group of fifteen participants in this project, in fact, did work across a diverse range of practice settings. Of course, I can say nothing about whether the diversity of my small group in any way reflects a similar diversity amongst all Buddhist lawyers in America. It may not at all. I can say only that while I did not set up interviews with some volunteers because they came from geographic areas already represented in my project, I did not have the same issue related to legal practice areas.

The participants in this project – between current jobs and prior jobs – are or have been: big firm litigators, specialty litigators, solos, prosecutors, criminal defenders, bankruptcy specialists, transactional attorneys, corporate counsel, government counsel, judicial branch employees, judges, and legal academics. Within the group of litigators, there is a wide range of areas covered, including commercial, corporate, class actions, family law, environmental defense, and intellectual property.

Tonya Kowalski made a general observation about practice setting, reflecting that every job setting in which a lawyer finds herself will have its own set of challenges – maybe related to

⁴⁴⁷ See, e.g., Deborah J. Cantrell, *What’s Love Got to Do With It?: Contemporary Lessons on Lawyerly Advocacy from the Preacher Martin Luther King, Jr.*, 22 ST. THOMAS L. REV. 296 (2010); DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988).

clients, or to the process of dispute resolution, or to the colleagues with whom one works. She concluded that “because we often have so little control over what challenges we meet at work, I have come to view it as a sort of karmic phenomenon – you can run but you can’t hide – your lessons and teachers will find you, or you them” regardless of where one works.⁴⁴⁸ Thus, for Tonya, picking a particular practice setting does not necessarily make it easier (or harder) to maintain one’s Buddhist practice.

Two of the litigators in the group, Karen Mendenhall and Michael Zimmerman, did not find it contradictory to litigate in a way informed by their Buddhist practices. As noted above, both thought they were better litigators because of their Buddhist practice. In particular, their ability to maintain equanimity allowed them to have more forthright conversations with clients, including disagreeing with a goal or tactic suggested by the client.⁴⁴⁹ Consider Karen Mendenhall’s example of disagreeing with her client’s proposed tactic at a deposition.⁴⁵⁰ Karen and Michael also noted how equanimity reminded them of the unhelpfulness of making conflicts personal. Therefore, litigation does not become a quest to beat or one-up the other side.

Susan Busby and Seth Linton, the two participants who work in the high-conflict area of family law, also described their Buddhist practices helping them navigate conflict. In particular, each of them noted that they used the Buddhist ideas of impermanence and non-attachment in assisting clients (or parties) to step back from the ways in which they had been viewing their situations.⁴⁵¹ They also introduced suggestions related to compassion to try to help clients or parties start to see themselves as problem solvers.⁴⁵² As Seth Linton puts it to the parties mediating with him, “I am going to go home and forget about you and I will never be there when your kid is out late and its two in the morning, and you will be the only person who is going to make anything work.”⁴⁵³

⁴⁴⁸ Telephone Interview with Tonya Kowalski, *supra* note 94.

⁴⁴⁹ Telephone Interview with Karen Mendenhall, *supra* note 104; Telephone Interview with Michael Zimmerman, *supra* note 98.

⁴⁵⁰ Telephone Interview with Karen Mendenhall, *supra* note 104.

⁴⁵¹ Telephone Interview with Susan Busby, *supra* note 56; Telephone Interview with Seth Linton, *supra* note 115.

⁴⁵² Telephone Interview with Susan Busby, *supra* note 56; Telephone Interview with Seth Linton, *supra* note 115.

⁴⁵³ Telephone Interview with Seth Linton, *supra* note 115.

Nonetheless, one practice area that did raise some specific worry for participants was criminal defense. Charlie Babbitt recalled his discomfort at being expected to cross-examine police officers with the intent to make them look bad.⁴⁵⁴ His Buddhist practice encouraged him to see people, including cops, in a larger perspective – as members of his community, as people who put themselves in harm’s way – but Charlie felt the criminal defense system needed him to portray the police in a one-dimensional way.⁴⁵⁵ Similarly, when Mary Zachar was working as a juvenile defender, she felt that the heightened adversarial nature of the system challenged her ability to find common ground among all the participants.⁴⁵⁶ Neither Charlie nor Mary said that their Buddhist practices absolutely precluded them from criminal defense work. But, they have each had the opportunity to move into other practice areas in which it has been more straightforward to integrate their Buddhist practices with the legal work that they do.

Interestingly, one participant, David Zlotnick, picked a criminal defense example when I asked him about whether he thought his duties as a lawyer under the Rules of Professional Conduct ever were in conflict with his Buddhist practice.⁴⁵⁷ He used the example to show a *lack* of conflict. He described a case in his Misdemeanor Criminal Defense Clinic in which the clinic team got an acquittal for a young man who had been accused of breaking into cars around town.⁴⁵⁸ After the trial, David lead a conversation between the student attorney and the client in which he asked the client to think about how he would feel if he came home and his mother told him that her car had been broken into and someone had taken her things. The client said that he would want to go after the person who had broken into his mother’s car. The group was then able to move into a more extensive conversation about taking another’s perspective and how that might change the decisions one would make about conduct.⁴⁵⁹

David did not offer the example as a sanguine or naïve assessment that, as a result of the conversation, the client would never again get in trouble. He offered it as an example of the way in which he found his Buddhist practice entirely compatible with his duties as a lawyer. David went on to say of the conversation, “I think lots of lawyers who aren’t Buddhist have that

⁴⁵⁴ Telephone Interview with Charlie Babbitt, *supra* note 95.

⁴⁵⁵ *Id.*

⁴⁵⁶ Telephone Interview with Mary Zachar, *supra* note 96.

⁴⁵⁷ Telephone Interview with David Zlotnick, *supra* note 107.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

very same conversation with a client. You don't have to be a particular type of anything to share that with a client."⁴⁶⁰

Some of the participants have worked in several different practice settings during their careers, and now are in areas in which they feel they are better able to integrate their Buddhist practices with their lawyering. Recall that Richard Power described that he intentionally moved his practice out of the emergency room and into the maternity ward.⁴⁶¹ He is also very upfront with his work colleagues that one of the reasons he continues to try and develop his Buddhist practice is "to be an easier person . . . to be around and to work with."⁴⁶² Three or four other people in Richard's firm now have contemplative practices and there is a room set aside in the office in which people can sit.⁴⁶³ Recall also that Charlie Babbitt has opened up his new practice in part so that he can be very open about his Buddhist practices, and he hopes that his Buddhist practice will be one of the reasons that clients choose him.⁴⁶⁴

As a group, the Buddhist lawyers in this project appear to agree with Tonya Kowalski's opening reflection that no matter where a lawyer practices, that setting will present the lawyer with challenges, including conflict. Thus, the charge for a Buddhist lawyer is to be steady in one's Buddhist practice across all aspects of one's daily life, work or otherwise. For some, possibly criminal defense lawyers, work will present harder challenges. For others, the harder challenges will be present outside work. Nonetheless, the Buddhist lawyers in this study actively refute the idea that they are not good advocates for their clients, and refute the idea that they must violate their Buddhist practices when they engage in the kind of "fighting" that happens within our legal system.

2. The Importance of Honesty as a Lawyerly Value

As suggested above, a common understanding of a lawyer is that she "zealously asserts a client's position."⁴⁶⁵ Thus, one might expect that when lawyers are asked to list important values for a lawyer to hold, they would include zealousness or related values like loyalty. The

⁴⁶⁰ *Id.*

⁴⁶¹ Telephone Interview with Richard Power. *supra* note 101.

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ Telephone Interview with Charlie Babbitt, *supra* note 95.

⁴⁶⁵ MODEL RULES OF PROF'L CONDUCT Preamble, para. 2 (2010).

lawyers in this project started their lists instead with honesty and truthfulness. I am certain that other members of the legal profession would agree that honesty and truthfulness are important lawyerly values.⁴⁶⁶ I also expect that the Buddhist lawyers in this project would agree that they are zealous and loyal in their legal work.⁴⁶⁷ I think the difference is likely to be one of definition, scope, and emphasis.

For example, all of the participants in this project rejected the idea that a lawyer is an amoral hired gun who demonstrates zeal and loyalty by doing whatever her client demands. Instead, the participants understood that they are responsible for having candid, reflective conversations with their clients in which they and their clients discuss issues from multiple perspectives, and along multiple dimensions. Think about David Zlotnick's discussion with his clinical client about what the client would feel if his mother's car was the one that had been vandalized.⁴⁶⁸

Only one participant, Laura Howe, specifically noted that her Buddhist practice has influenced the way in which she demonstrates her professional values. More particularly, she noted that, in law school, she thought of honesty more narrowly and as consistent with specific professional rules, like candor to the tribunal.⁴⁶⁹ Because of her Buddhist practice, she now holds a more expansive view. As she described it, honesty now includes not "sugar coating" advice to clients.⁴⁷⁰

While Laura was the only participant to specifically note an effect of her Buddhist practice on how she framed a lawyerly value, I expect that most other participants could have given similar examples. I say that because participants' descriptions of how they practice law better because of their Buddhist practices included examples similar to Laura's. I think specifically of Richard Power's example of using "get-out-of-jail-free cards" in negotiations to encourage candid conversations, but discourage parties from getting emotionally stuck on a position.⁴⁷¹

⁴⁶⁶ See MODEL RULES OF PROF'L CONDUCT R. 3.3 (2010).

⁴⁶⁷ For example, Karen Mendenhall specifically mentioned zealousness as a lawyerly value she holds. Telephone Interview with Karen Mendenhall, *supra* note 104.

⁴⁶⁸ Telephone Interview with David Zlotnick, *supra* note 107.

⁴⁶⁹ Telephone Interview with Laura Howe, *supra* note 121.

⁴⁷⁰ *Id.*

⁴⁷¹ Telephone Interview with Richard Power, *supra* note 101.

3. The Importance of Compassion as a Lawyerly Value

Besides honesty and truthfulness, the other value that most of the participants mentioned, or described as part of their Buddhist lawyering practice, was compassion. That may surprise some, and it may be especially surprising because the participants who mentioned it practice across many different legal settings, from corporate litigation, to family law, to transactional law and legal teaching.

There have been some efforts in the legal profession to encourage lawyers to actively cultivate compassion as a lawyerly practice. For example, efforts made by the collaborative law movement, which began in the family law area and has now expanded into a broader civil arena.⁴⁷² The International Academy of Collaborative Professionals describes as goals of the process that participants, including the lawyers, will show “compassion, understanding, and cooperation . . .” to each other.⁴⁷³ Similarly, there has been a fairly sustained call that law schools should teach or encourage law students to think of compassion as a key lawyering competency.⁴⁷⁴ Nonetheless, the word “compassion” is not used a single time in the ABA Model Rules of Professional Conduct. It is also a value that most clients say their lawyers do *not* demonstrate.⁴⁷⁵

Compassion, however, is a key component of a Buddhist practice.⁴⁷⁶ It is the result of, and response to, understanding the world as interdependent and impermanent. For the Buddhist lawyers in this project, expressing compassion as they practice law came about not because of how they were trained to be legal professionals, but because of the way in which they have committed to understanding themselves through their relationships with others.

Just as participants have integrated contemplative practices into their daily lawyering, the participants have also integrated compassion into their daily lawyering (compassion towards

⁴⁷² See Sherrie R. Abney, *The Evolution of Civil Collaborative Law*, 15 TEX. WESLEYAN L. REV. 495, 496 (2009).

⁴⁷³ International Academy of Collaborative Professionals, http://www.collaborativepractice.com/_T.asp?T=FAQs&FAQ=1191085428 (last visited Aug. 23, 2010).

⁴⁷⁴ See Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering*, 87 NEB. L. REV. 1 (2008) (reviewing research and literature related to lawyers and compassion).

⁴⁷⁵ *Id.* at 6-10.

⁴⁷⁶ See *supra* Part II.B.1.

disputants, compassion towards opposing counsel, compassion towards one's law partners). Furthermore, participants felt strongly that they are better lawyers because of their compassionate practices. Thus, it is not surprising that participants would answer that compassion is one of the three most important values for a lawyer to demonstrate, even though it is not a value that is obvious from the standards created by the legal profession.

It is important to again note that the Buddhist idea of compassion is multifaceted, not simplistic. Compassion does not mean a lawyer feels pity for her client and feels equal pity for the other side. It does not mean that a lawyer must be friends with everyone in a legal matter, including clients, opposing counsel, and third parties. It does mean that a lawyer intentionally triggers an empathetic survey of everyone involved in the legal matter and that a lawyer shares her thoughts from her empathetic survey with her client, and if appropriate, with others. It also means that a lawyer is prepared to meet negative actions and emotions with a response intended to de-escalate (and notice that de-escalate does not equate with capitulate).

I expect that the participants' lists of important lawyerly values are further examples of how they likely do not stand uniquely apart from all other lawyers. I suspect that if I had interviewed non-Buddhist lawyers who practice collaborative law, I would have heard a list of values very similar to the ones given by participants. I also suspect that if I had interviewed lawyers from other faith traditions, I would have heard a similar list.⁴⁷⁷ Finally, I suspect that if I had interviewed lawyers who identified themselves as secular humanists, I would have heard yet another similar list.⁴⁷⁸ Thus, there may be many ways to come to the kind of lawyerly practice illustrated by the participants in this project. The Buddhist lawyers in this project do not claim a monopoly on a certain set of legal values. Nor do they claim that non-Buddhist lawyers cannot be as mindful, compassionate, and skillful as Buddhist lawyers. What they do claim profoundly is that for each of them, they have found a path to engage and integrate in the world around them, both public and private, both within and without their profession.

⁴⁷⁷ See Timothy W. Floyd, *Lawyers and Prophetic Justice*, 58 MERCER L. REV. 513 (2007) (noting the importance of compassion in determining justice). See also Amelia J. Uelmen, *One Case at a Time: On Being a Catholic Lawyer*, in PROFESSIONS OF FAITH: LIVING AND WORKING AS A CATHOLIC 55 (James Martin, S.J. & Jeremy Langford eds., 2002) (describing how Catholic tenets of love and mercy come into a large firm litigation practice).

⁴⁷⁸ See Keeva, *supra* note 446.

VI. CONCLUSION

This initial exploration of Buddhist lawyers in America provides rich detail about what lawyering looks like when it is guided by commitments to engaging legal problems and actors with equanimity, seeing interdependence between attorney, client, and others, and showing compassion to clients and others. The stories of the fifteen participants in this project are relevant not only to understanding what it means to be a “Buddhist lawyer,” but also to understanding a way of approaching lawyering that perceives legal conflict as an opportunity for coordinated problem-solving, as opposed to an opportunity for unabashed adversarialness.

The participants’ descriptions also illuminate ways in which daily and routine lawyering are critical to being a “good” lawyer. For the Buddhist lawyers in this project, the ways in which they answered the phone or interacted with their colleagues in the office were equally important as a closing argument or as conceiving of a new structure for a real estate deal. The practice of law has become an extension of their Buddhist practices – practices in which they have committed to mindfulness at all levels.

This project was designed to be an initial snapshot of Buddhist lawyers, and it provides the first information on what it means to be a Buddhist lawyer. It lays a crucial foundation for further research to compare larger samples of Buddhist lawyers. It also provides a foundation for further comparative research with other lawyers who bring non-legal value systems (religious or otherwise) to bear on their practice of law.