

Special Message From the Founding Chair: The Passing of the *Hossu*

By Simeon H. Baum

For over a decade, since the section's inception, NYSBA's Dispute Resolution Section has observed a ritual of transition from one chair to the next. In lieu of passing the gavel, we have passed the *hossu*.

We lawyers are all familiar with the gavel. Shaped like a hammer, it is held by a judge. With a loud bang, it can promptly restore order in the court. It is a symbol of power and authority.

The *hossu* derives from the Buddhist tradition. It is a stick roughly a cubit in length, with a "tail" at one end made of horsehair. Early Buddhist monks used to keep the *hossu* as an aid during meditation. When bothered by flies, they could use the *hossu* to shoo the flies away without killing them. They thus managed to practice the ancient Hindu principle of *ahimsa*—doing no harm. Mohandas Gandhi brought this same principle of *ahimsa* into his work of civil disobedience in India,¹ and Martin Luther King borrowed it from Gandhi for civil disobedience here in the United States.² Given this intent of doing no harm, one hopes that no horses were hurt in obtaining the hair for the *hossu*'s tail!

The *hossu* subsequently came to be a symbol for transmission of authority from master to disciple in the Zen tradition. Now, for centuries, it has stood for confirmation of the next generation's realization of Truth.

When the time came to shift authority from the first Dispute Resolution Section chair to the next, the *hossu* seemed like an apt substitute for the gavel. For a field that offers processes like mediation—and even arbitration—as creative alternatives to the joust and debate of litigation, the *hossu* carries suggestive symbolism. A silent swish of the tail replaces

the gavel's bang. A gentle nudge sparing life replaces the result that would ensue from the gavel's application to any offending fly. The *hossu* can be seen as an emblem of freedom that preserves things as they are. Somehow, through non-coercion, harmony is restored, truth is realized.

Two stories on transition drawn from old traditions highlight the value of non-coercion and its relationship to truth. The first comes from a Zen *koan*³ and the second from the Bible. Even for the atheists and skeptics among us, they might still have some meaning.

Hui Neng—Robe on a Rock

Hui Neng was the sixth Patriarch of Zen.⁴ He was a poor, not highly educated man from Southern China. As a young man, one day in the marketplace he heard a recitation of the Diamond Sutra and was powerfully struck by the phrase "awaken the Mind abiding it nowhere." He traveled from the South to study with the leading Zen teacher, Gunin, known as the fifth Patriarch in lineage from Bodhidharma, who is seen as the first Patriarch of Zen. Due to his lower socio-economic status, Hui Neng was made to work in the rice fields at Gunin's monastery. Nevertheless, he practiced deeply and came to a profound realization of Truth as understood in the Zen tradition.

When the time came to pick his successor, Gunin called for a competition among his monks to see who could present the deepest, most vital and essential expression of his Zen realization. The chief monk, Shinshu, whom all expected would take Gunin's place, wrote the following poem on the *dharmas*⁵ hall wall:

The Mind is a mirror bright
The body is a *Bodhi* stand
Polish the mirror every day
Do not let a speck of dust alight upon it.

Bodhi is a Sanskrit term for awakening to Truth or enlightenment. In a community where *zazen*—Zen mediation—is practiced daily and intensively, Shinshu's poem sent a vigorous ethical message urging assiduous work at achieving and maintaining concentrated awareness.

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That night, the lowly, illiterate rice worker, Hui Neng, got another monk to post the following anonymous poem on the wall:

The Mind is not a mirror bright
The body is not a mirror's stand
If everything is originally pure
Where can a speck of dust alight?

Hui Neng's poem was seen as a much deeper expression of a non-dual insight. It cut past volitional efforts and a cognitive structure of ignorance and attainment, mind and body, purity and defilement, to realizing ultimate Truth, as it is, in the midst of—and as—daily life itself.

Gunin, on seeing Hui Neng's poem, realized that Hui Neng had to be his *dharma* (Truth) successor. This was a politically fraught decision. He gave Hui Neng his robe and bowl—another symbol of succession—and told him to leave the monastery and hide in a safe place, until the time for his announced succession was ripe.

Of course, news leaks and travels fast. When the monks learned of Gunin's action, they were outraged on Shinshu's behalf. One of the monks, a former general named Myo, committed to find Hui Neng and recover the robe and bowl. He chased Hui Neng down to a mountain pass.

Now comes the part of the story that is most pertinent to our reflection on transition, and the power of non-coercion in connection with dispute resolution and the realization of Truth. When Hui Neng saw Myo coming, he put the robe and bowl on a rock and declared “the ultimate Truth is not a matter of force. Take the robe if you can.”

Legend has it that Myo was dumbstruck and paralyzed. Breaking into a sweat, he could not lift the robe. He turned to Hui Neng and earnestly asked for instruction. Hui Neng's answer has become a classic Zen *koan*—an expression used by Zen practitioners in concentrated meditation deeply to challenge their assumptions and all efforts, facilitating a thoroughgoing breakthrough in their fundamental life orientation and awareness. He answered: “Think neither good nor evil. At such a time, who is the true monk Myo?”

Moses: Striking a Rock for Water

The story of the robe on the rock brings to mind the Biblical tale of Moses and another rock. Biblical tales may be somewhat out of vogue, but this one also reflects on a great leader and the use of force to lead, and in connection with the ultimate Truth.

The Israelites had been wandering in the desert for quite a while after their escape from slavery in Egypt. Things had

not been easy, to say the least. There was insecurity and uncertainty, homelessness and disorientation, and a good number of challenges to Moses's leadership. The telling of the Biblical tale takes as a given that Moses's authority did not derive from popular vote, political wiles, or social caste (although he was the highest born among the Israelites, having grown up in the royal court . . .). Rather, from the Biblical perspective, his authority was rooted in Ultimate Reality—the Creator of heaven and earth, Who demanded justice, mercy, and daily recognition of His unifying Truth. Putting aside myth or reality, this expresses a sense that something larger than any one person, which grasps and transcends the broader social reality, requires attentive awareness and responsiveness—and that unifying Truth is the true source of authority. Of course, no one possesses this Truth. Yet, deep orientation towards Truth is at the heart of leadership.

There came a point where the Israelites needed water. They were fed up with wandering in the desert and sought immediate and material sustenance. Quarreling with Moses, they complained that he had dragged them from fertile Egypt to a place not fit for grain, figs or pomegranates—a place with no water. In the biblical story, G-d instructs Moses to take his staff, gather the people and in their presence, *tell* the rock to yield its water. But Moses goes further; he uses force. Before the assembled people, he shouts: “Hear now, you rebels; shall we bring water for you from this rock?” Moses *hit* the rock twice with his staff, abundant water poured forth, and the people and their livestock drank fully.⁶

As a consequence of Moses's having used force to produce the waters of Meribah, G-d bars Moses from personally leading the people to the promised land.

Hossu: A Symbol of Non-Coercion, Deep Listening, and Attunement to Truth and Actual Life of Parties

As a symbol for the Dispute Resolution Section, and its leadership, we see in the *hossu* the message that there is an alternative to the use of force: freedom, compassion, creativity, and responsiveness to intimate and embracing Truth. In place of authoritative pronouncements, we substitute deep listening and adjustment that enables the parties to discern subtleties, acknowledge textured life realities, accommodate, and accept the actuality of their life circumstances and each other. We practice patient listening until the total situation with all its distinctions, including, *inter alia*, our legal context, is clarified. This promotes participation in, and respect for, something far greater than oneself or one's own power.

Litigation was a great advance over the mediaeval joust. Yet we are all too familiar with the power underlying our legal system. We have observed adversarial battle in the motions and discovery skirmishes as well as in trial. We understand the

power of enforcement of judgments, with the aid of sheriffs and marshals in case of noncompliance.

Beyond this, to our credit, we know how to work hard. There are many ways in which we plow through cases, churn out briefs, push to deadlines. There are many times when we might force a point, squeeze facts or arguments to seek victory. Judges, too, work hard. Underlying the law is a mass of human effort. All of this can certainly be helpful. Yet there are times when it is not the product of our own efforts—in a judicial decision or arbitral award—that produces resolution for parties.

There are other, softer ways of helping with the resolution of disputes. Chief among these is mediation. Rather than force a judgment or decision upon warring parties, the mediator listens. A patient mediator facilitates the parties' own process of building understanding and deal-making. In mediation, we offer a field for dialogue, in which parties can listen together, attentive to one's own life circumstances as well as the life circumstances of all involved. This includes the full range of human dimensions—the subjective zone of feelings, principles, values—even identity; the relational zone of inter-party dynamics and histories; one's embedded hierarchical structure in communal or corporate contexts, as well as the legal/economic picture and broader commercial and business realities.

With patient receptivity, the mediator supports the gathering of a deep pool of information and impressions. As the mediator models openness and adjusts to new information, the parties, with the help of counsel, may themselves adjust—again recognizing that we all participate in something much greater than ourselves. Eventually, a sense of the larger whole emerges. Groping in the midst of uncertainty, eventually, the parties can exchange proposals and arrive at a deal.

Rather than use coercion, the mediator fosters party freedom and the growth of compassion. Bush and Folger, in *The Promise of Mediation*, have observed that as parties exercise choice in process moves and in selection of substantive deal terms, they become more able to recognize the other. Himmelstein and Friedman, through their Center for Understanding in Conflict have for 40 years shared the insight that deepening understanding fosters a greater acceptance of oneself, others, and the broader life context—acceptance of Reality—that liberates creative responses and adjustment needed to arrive at a resolution.

This shift from power-based authority, or the power of authority, to the softer whisk of the *hossu*—being gentle with the parties and preserving them in their wholeness—can certainly be found in the zone of negotiation, the grandparent of all dispute resolution processes. Rooted in party freedom,

negotiating parties arrive at resolution only if all can hear one another and agree.

Arbitration, too, as a creature of contract, is an expression of party freedom. One of our section's past chairs, Charlie Moxley, who annually co-presents a three day arbitration training with another former section chair, Edna Sussman, has revealed a softer, respectful quality of deep listening in his internal decision-making process as an arbitrator. Mr. Moxley once described to this author the manner in which he gathers facts and evidence, immerses himself in the law, and engages in a deep process of contemplation through which the answer ultimately becomes apparent.

A whisk of the *Hossu* sends a nuanced message of patiently waiting for truth to arise. It signals an attitude of respecting parties and their freedom; bringing compassion into the resolution process and being open to the ever-deepening sense of, and responsiveness to, the awe inspiring and wondrous reality in which we all participate—to be deeply attuned to Truth. This message finds authority and significance in the parties and broader life. It signals a form of leadership that leads not by command, but by following the parties themselves. Leadership of this kind is true service, and a gift.

Endnotes

1. Gandhi, Mohandas K., *Gandhi, An Autobiography—The Story of My Experiments with Truth* (1927, 1929)(Beacon Press 1957), p. 349 et seq.
2. King, Martin Luther, *Stride Toward Freedom* (1958). <https://paavaniayurveda.com/blogs/the-ayurvedic-lifestyle/walking-the-path-of-ahimsa-martin-luther-king-jr-mahatma-gandhi>.
3. Koan, or kung an in Chinese, literally means “public case” or “public document.” Drawn from the sayings and doings of Zen masters, in practice, particularly in the Rinzaï Zen lineage, Zen monks and practitioners sit with koan in Zen meditation or concentration, known as zazen. The koan typically presents a paradoxical or unanticipated expression that challenges and immobilizes the practitioner's discriminating consciousness; engages the practitioner's full being, body, mind, emotions, sense of world, and all; and produces the “great doubt.” It offers an opportunity for insight opening the practitioner to profound internal revolution and shift in orientation, <https://en.wikipedia.org/wiki/Koan>; Shibayama Zenkei, *Zen Comments on the Mumonkan* (Harper & Row 1974).
4. Zen is the Japanese word for the Chinese word Ch'an, deriving from the Sanskrit dhyana, which has been generally translated as meditation. Having first learned of this story from a Japanese source, Shibayama Zenkei, *Zen Comments on the Mumonkan* (Harper & Row 1974), 23rd Koan, p. 166 et seq., and to strike a sharper distinction between Hui Neng and Myo, I retain use of the Japanese names for all characters in this story other than the Chinese name for the protagonist, Hui Neng. For the assiduous, here in italics are the Chinese names for the following Japanese names used in this tale: Gunin: *Hung Jen*; Shinshu: *Shenxiu*; Myo: *Huiming*.

5. Dharma is a loaded term at the heart of the Buddhist tradition. It derives from the Sanskrit root “dhr” or to hold, bear, support or sustain. As such, it can also refer in Buddhist philosophy to metaphysical units. With prior use in the Hindu tradition, e.g., as used in the Bhagavad-Gita, dharma had the sense of “duty” or alignment with cosmic law that upholds righteousness. Adopted by the Buddhist tradition, it means truth in many forms. Dharma can be the teachings of the historical Buddha, the Buddhist canon, or “Three Baskets”: Tipitaka (Pali)/Tripitaka (Sanskrit); the eightfold path leading to nibbana (Pali)/nirvana (Sanskrit) (cessation, the unconditional); and Buddhist practices, including meditation. In later usage, Dharma came to have the central meaning of Truth, or Ultimate Truth, which is not separate from Reality. For a comprehensive and profound study of the term Dhamma in the Theravada Buddhist tradition, see Carter, John Ross, Dhamma, Western Academic and Sinhalese Buddhist Interpretations, a Study of a Religious Concept (Hokuseido Press, 1978).
6. Bible, King James Version, Numbers, 20:8-12. Cf. Exodus 17, where the rock striking approach fared better.

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