

Sun Tzu, Lao Tsu **Using yin and yang to help make your cases stronger.**

By Bill Daniels

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Yin and yang are, of course, Chinese archetypes describing two opposing aspects of a single common principle. Yin is generally characterized as soft, slow, tranquil and gentle, while Yang is hot, restless, hard and rapid. Westerners assume one is female and the other male, but that's not strictly true. In Chinese philosophy, both coexist, complementing even as they stand opposite. Either gender can possess elements of either aspect without automatically being labeled as "sissy" or "butch."

Still, we're talking about practical principles here and what yin and yang teach us is, when working your cases, it is important not to overload on any one approach. Too gentle never works, but neither does too harsh.

The best lawyers find a balance point and they work it. Ever notice how folks will speak in admiring tones about attorneys who are fierce opponents in the courtroom but great to have a drink with afterwards? That's what I'm talking about.

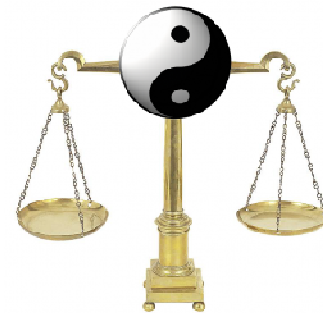


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So, two useful perspectives on being a more effective trial lawyer can be found in the writings of those yinny and yangy Chinese ancients: Sun Tzu and Lao Tsu.

Sun Tzu, in case you never saw *Wall Street* or plotted the overthrow of anyone in particular, wrote *The Art of War* in 500 B.C. His slender volume is the oldest military treatise in the world.

Lao Tsu, on the other hand, authored the *Tao Te Ching*, which according to tradition was completed somewhere in the 6th Century B.C. The book embodies the essence of Taoism and, 2,500 years later, provides one of the major underlying influences in Chinese thought and culture.

Both volumes contain crisp little axioms that you can either ponder endlessly in search of higher meaning or, toss away dismissively. I suppose it all depends on your personal outlook. Could be you are George Harrison at the feet of the swami. Could be you're a native New Yorker who stumbles into a Malibu ashram on saffron robe Sunday.

Personally, being part Chinese (Portuguese trading family. Someone's long ago mistress, apparently), I try to remember and apply both schools. Two more arrows in my quiver, if you will.

Starting with the yang:

Sun Tzu said: The art of war is of vital importance to the state. It is a matter of life and death, a road either to safety or to ruin. Hence it is a subject of inquiry which can on no account be neglected.

Practicing civil law is very much like engaging in the kind of warfare Sun Tzu describes in his book. There are strategic challenges, supply and maneuver, training, intelligence, discipline and tactics. The objective, of course, is to win justice for your client. The battlefield is the courtroom. The ground is generally hostile and consumer attorneys are usually outmanned and outgunned.

Accordingly, when pursuing a case, getting to the point is critical to success. *In war, then, let your great object be victory, not lengthy campaigns.* So, be proactive in litigation, not reactive. Even if the temptation is to lay back and let your files work themselves, that's not a winning strategy. *Whoever is first in the field and awaits the coming of the enemy, will be fresh for the fight; whoever is second in the field and has to hasten to the battle, will arrive exhausted.*

Keep your plan of attack to yourself when possible. You can maintain tactical surprise while adhering to the letter and spirit of the Discovery Act. *The spot where we intend to fight must not be made known; for then the enemy will have to prepare against a possible attack at several different points; and his forces being thus distributed in many directions, the numbers we shall have to face at any given point will be proportionately few.*

When you work your cases, don't get stuck in a rut. Vary your tactics to prevent becoming overly predictable. *The general who thoroughly understands the advantages that accompany variation of tactics knows how to handle his troops. The general who does not understand these may be well acquainted with the configuration of the country, yet he will not be able to turn his knowledge to practical account.*

I highly suggest taking a couple of hours to either acquaint or reacquaint yourself with *The Art of War*. Grab a printout off the internet and read it by the pool. It's only thirteen short chapters. Read it and you'll really get a supercharged educational experience. Nothing like imagining 10,000 charging warhorses while getting the latest tips on when to ask for supermarket sweep sheets in your slip and fall case. Adds spice to the proposition.

More in the yin category is Lao Tsu's way of thinking. This is softer philosophy but, again, you can't have effective yang without its opposite and, Taoist principles are so cool, they even make wrinkled puppets sound profound in pretty much every George Lucas film ever made.

The three basic virtues in Taoism, called the "Three Jewels" or "Three Treasures" are compassion, moderation and humility. All are virtues, even here in the West, though sometimes we throw one or more aside in our headlong rush to win.

Lao Tsu reminds us that in order to truly succeed, we need to accept that from time to time, we will fail. *Accept disgrace willingly. Accept misfortune as the human condition. What do you mean by 'Accept disgrace willingly'? Accept being unimportant.*

We always need to be willing to speak openly and earnestly with jurors and judges as we present our client's case. *He who does not trust enough will not be trusted.* Juries, after all, are bull#\$%@ meters. Spinning a false yarn leads only to disaster.

In all your dealings, treat others with dignity and respect. *A good soldier is not violent. A good fighter is not angry. A good winner is not vengeful. A good employer is humble. This is known as the Virtue of not striving. This is known as ability to deal with people. This since ancient times has been known as the ultimate unity with heaven.* This is also known as the *mensch* principle.

So, I guess the lesson for today is, don't forget to ground your wisdom and knowledge in humanity. As the Gerry Spence people teach, what we do is all about finding our own voice and using it to speak eloquently for our clients. Whether it's Eastern, Western, Christian, Jewish, whatever, stay true to your basic principles and according to the great rule of the universe, you will thrive.

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