

Volume 6 Number 2 (2012): 107-122

<http://www.infactispax.org/journal/>

**Alternative Dispute Resolution and Niyama,
The Second Limb of Yoga Sutra**

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I. Introduction

The *Yoga Sutras* is an ancient text that was recorded in India more than 1,000 years ago.¹ It contains the 8-limb path.² The 8-limb path describes various prohibitions and requirements for reaching peace and fulfillment.³ On this 8-limb path, the second limb, *Niyama*, teaches that looking at life through a virtuous filter can be of benefit.⁴ *Niyama* literally means observances.⁵ *Yoga Sutra* is revived by its application to Alternative Dispute Resolution (ADR).⁶ “The word

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¹ Patanjali, *Yoga Sutra* (Inner Traditions International, ed. Georg Feuerstein, 1989). See e.g., Judith Lasater, "Cultivate Your Connections," *Yoga Journal* (last viewed on Mar. 29, 2012 <http://www.yogajournal.com/wisdom/455>).

² Patanjali, *Yoga Sutra*, (Inner Traditions International, ed. Georg Feuerstein, 1989), at II.29.

³ *Id.*

⁴ *Id.* at II.32.

⁵ *Id.*

⁶ Patanjali, *Yoga Sutra* (Inner Traditions International, ed. Georg Feuerstein, 1989).

sutra literally means a thread which strings together a series of 'beads' or aphorisms in their most terse or unadorned elaboration” [italics added].⁷ The *sutra*'s words take on meaning when they are applied.⁸ Once they are strung in context, a lesson takes shape.⁹ Stringing together the *sutras* around ADR practices, including, negotiation, mediation, and plea bargaining, is beneficial for studying conflict and dispute resolution in a multicultural and philosophically spiritual way. Law schools, which teach conservative, Socratic analysis, train the majority of ADR practitioners.¹⁰ Lawyers tend to emphasize law during dispute resolution,¹¹ and believe that ADR “is not merely an alternative, nor a private process within [the legal] framework, but a discourse that carries legal meaning and which can be used to enforce and implement the Rule of Law, encompassing its highest values.”¹² This article intends to encourage ADR practitioners to think in terms of the *sutras* in order to expand knowledge, develop new strategies, and better resolve disputes with savvy awareness and acceptance rather than stricture.¹³ Dovetailing with *ADR and Yama, The First Limb of Yoga Sutra*,¹⁴ this article will contemplate the five subcategories of *Niyama*, the second limb.¹⁵ These subcategories are *saucha* (purity), *santosha* (truthfulness), *tapas* (heat), *svādhyāya* (study of sacred texts), and *ishvarapranidhana* (surrender).¹⁶

II. *Niyama*

Niyama translates from Sanskrit as “observances.”¹⁷ Yogis often interpret the *Niyama* as group of spiritual and behavioral aims that should be observed.¹⁸ In the ADR context, we are observing how *niyama* can help resolve disputes. Truthfulness, purity, heat, study of sacred texts, and surrender may seem like a motley set of qualities, but when they are braided in with the principles of ADR, they produce valuable wisdom.¹⁹

A. *Saucha*

Saucha is purity, radiance, or cleanliness.²⁰ Georg Feuerstein writes, that “the practice of purification (*sauc[h]a*) as one of the items of observance (*niyama*) may comprise a physical

⁷ Joe LePage, *Patanjali's Yoga Sutras as a Model for Psycho-Spiritual Evolution*, 6 International Journal of Yoga Therapy 23, Abstract (1995).

⁸ *Id.*

⁹ *Id.*

¹⁰ Cris Currie, "Should A Mediator Also Be An Attorney?," Mediate.com, Aug. 2000 (last viewed on Mar. 29, 2012 <http://www.mediate.com/articles/currie.cfm>).

¹¹ *Id.*

¹² Michal Alberstein, *Forms of Mediation and Law: Cultures of Dispute Resolution*, 22 Ohio St. J. on Disp. Resol. 321, 322 (2007).

¹³ Cris Currie, "Should A Mediator Also Be An Attorney?," Mediate.com, Aug. 2000 (last viewed on Mar. 29, 2012 <http://www.mediate.com/articles/currie.cfm>).

¹⁴ Carmen M. Cusack, *ADR and Yama, The First Limb of Yoga Sutra*, ADRJ (accepted Mar. 22, 2012).

¹⁵ Patanjali, *Yoga Sutra*, II.32 (Inner Traditions International, ed. Georg Feuerstein, 1989) 81.

¹⁶ *Id.*

¹⁷ Patanjali, *Yoga Sutra*, II.32 (Inner Traditions International, ed. Georg Feuerstein, 1989) 81.

¹⁸ *Id.* See e.g., Judith Lasater, "Cultivate Your Connections", Yoga Journal (last viewed on Mar. 29, 2012 <http://www.yogajournal.com/wisdom/455>).

¹⁹ *Id.*

²⁰ B.K.S. Iyengar, *Light on Yoga* (Random House, Inc., 1994), 530. Patanjali, *Yoga Sutra*, II.32 (Inner Traditions International, ed. Georg Feuerstein, 1989), 80.

cleansing process, a psychic process of catharsis and also a moral act of pure intention.”²¹ While it would be ideal to describe how mutually pure intentions will carry opponents effortlessly toward resolution, the truth is that there is no such thing as purity. Any resolution process might be plagued with egotism, posturing, puffing, anger, terror, ignorance, sneakiness, withholding, sadism, confrontation, obstructionism, or graymail. Disputes are at the center of conflict resolution.²² Parties develop their intentions to deal in the face of impasse and conflict.²³ Attempting to resolve the problem does not suddenly open a spiritual portal where solutions flow purely between the parties.²⁴ To the contrary, parties bring baggage that taints their perspectives.

By observing the impurity, we can separate the personal from business, the impersonal from the essential.²⁵ “[S]*au*cha, at its root, is concerned with keeping different energies distinct” [italics added].²⁶ Before attempting to resolve a conflict, it is advantageous to reflect on one’s impure perspective. Asking, what are my objectives? Can they be clarified? Can they be humbled or reprioritized? Do they need to be purified—and if so, will this make the fight easier or more successful?

In *White Collar Zen*, Steven Heine writes,

Zen agrees with Nietzsche that from ignorance or arrogance we are,
Human, all too human....

Dogen further explains that inherent constraints cannot be separated from enlightenment.

When one side is illumined, the other side is dark.²⁷

“Yoga has become a very recognizable feature of Western culture.”²⁸ But the idea that one should reflect on his own flaws in order to make greater gains, is something of an anomaly in Western conflict resolution. All too often we are capable of observing others’ failures, noting impurities and self-deception. The Grammy Award winning musical duo, Outkast, once ineloquently sang “I know you like to think your s—t don’t stank, but lean a little bit closer see,

²¹ Patanjali, *Yoga Sutra*, II.32 (Inner Traditions International, ed. Georg Feuerstein, 1989) 80.

²² Shireen Sondhi, "Is Timing Everything?," *Up-Date Magazine*, May 2011 (last viewed on Mr. 28, 2012, http://www.sfhgroup.com/blogs/news_and_articles/2011/06/01/is-timing-everything/).

²³ *Id.*

²⁴ *Id.*

²⁵ Utilizing *Sau*cha in business disputes offers more than a way to “help you get your desk in order and not double-book your calendar” Sangeetha Vinod Sudhakar B, A Literature Review on the Impact of Yoga Way of Life on the Reduction of Job Burnout of Managers, International Conference on Technology and Business Management, 643 (2011) (last viewed on Mar. 23, 2012, <http://www.trikal.org/ictbm11/pdf/HRM/D1321-done.pdf>).

²⁶ Aadil Palkhivala, "Teaching the Niyamas in Asana Class," *Yoga Journal* (last viewed on Mar. 23, 2012, http://www.yogajournal.com/for_teachers/976).

²⁷ Steven Heine, *White Collar Zen* (Oxford University Press 2005) 176-177. See also, Steven Heine, *Bargainin' for Salvation: Bob Dylan, a Zen Master?*, (Continuum, 2009).

²⁸ Sacha Matthew, Indian Religion and Western Yoga Practice. Masters’ thesis, Concordia University, Abstract (2011).

the roses really smell like poo poo.”²⁹ The reflection on impure objectives or mechanisms is natural, but to maximize *saucha*, we need to point the laser at our own tactics, intentions, and deficiencies.

“There is enormous risk inherent in the process of **negotiating** an agreement, as those involved must rely on the belief that they have all the relevant information that they need in order to make a wise deal.”³⁰ Beatles’ manager, Brian Epstein, once made a costly mistake because he failed to realize that he did not have all of the information.³¹ He opened royalty negotiations for the Beatles’ movie, *A Hard Day’s Night*, with a demand that he believed was quite high, 7.5%, only to have it accepted immediately.³² Mr. Epstein knew nothing about the movie industry, so he did not know that if he was going to open with a high demand, then he should have begun with 25%.³³ There is no way to know what number the movie executive would have used to open, but had the executive been under the prolonged impression that Mr. Epstein knew about the business, then it is likely that the Beatles would have received more money for *A Hard Day’s Night*.³⁴ Observing *saucha* in an ADR context would not have magically permitted Mr. Epstein to intuit the starting position of “25%.” But, reflection on his position, intentions, and perspective would have allowed Mr. Epstein to see that his approach did not exercise professional judgment.³⁵ In addition to the wisdom found in the *sutra*’s observances, business ethics require that practitioners prioritize purity in judgment over their desire to make a deal.³⁶ “Desire obscures even the wisdom of the wise.”³⁷ Mr. Epstein’s impure desires, to appear knowledgeable, to remain in control, to work alone on behalf of the Beatles, overcame his negotiation objectives—to get as much money as possible for his client.³⁸ Reflection on his impurity may have led him to hire a consultant, conduct research, or strategize differently.

Mr. Epstein is no exception.³⁹ Everyone is impure, by reflecting on this, you not only open yourself to the possibility of perfecting your approach, objectives, and strategy, but you also leave room to accept your opponent’s imperfect behavior. If you seize upon these imperfections with excessive passion, then you will lose your focus. Instead, you must continue to observe the impure motives and segregate them from the essential issues and outcome. In other words, because no one is perfect, keep your eyes on the prize, not the lies. Practice *saucha*,

²⁹ Outkast, “Roses,” *The Speakerboxxx/The Love Below*, Purple Ribbon Label (2003).

³⁰ Michelle Oberman, *Sex, Lies, and The Duty to Disclose*, 47 *Ariz. L. Rev.* 871, 872 (2005). See e.g. Daniel McAuliffe, *Is Honesty the Required Policy? Ethical Settlement Negotiations*, 43 *AZ Attorney* 20 (2007).

³¹ G. Richard Shell, *Bargaining for the Advantage* (Penguin, 2006) 158.

³² *Id.*

³³ *Id.*

³⁴ [http://en.wikipedia.org/wiki/A_Hard_Day's_Night_\(film\)](http://en.wikipedia.org/wiki/A_Hard_Day's_Night_(film))

³⁵ W. Bradley Wendel, *Professional Responsibility* (Wolters Kluwer, 2 ed., 2007) 438.

³⁶ *Id.*

³⁷ M. G. Chitkara, *Kashmir Shaivism: Under Siege*, 69 (A.P.H. Publishing Corporation, 2002).

³⁸ G. Richard Shell, *Bargaining for the Advantage* (Penguin, 2006) 158.

³⁹ *Id.*

which is “indifference...and non-attachment...for...one-pointedness...and vision of the inner self” to strike the deal.⁴⁰

A. *Santosha*

Santosha is satisfaction and agreement.⁴¹ “In nearly every translation of Yoga Sutra II.42, *santosha* is interpreted as the greatest [satisfaction]...that cannot be shaken...by injustice” [italics added].⁴² Looking for *santosha* in the criminal justice system leads us to observe plea bargaining. “Some 97 percent of convictions in federal courts were the result of guilty pleas. In 2006, the last year for which data was available, the corresponding percentage in state courts was 94.”⁴³ *Santosha* is a part of the plea process. When attorneys bargain and reach an agreement on behalf of their clients, clients “release [their] minds from constantly wanting [their] situation[s] to be different...[They] find more ease.”⁴⁴ The plea-bargaining process is worth observing in the context of agreement since it is the way in which most criminal defendants agree to satisfy their debt to society.⁴⁵ “The ordinary criminal process has become too long, too expensive, and unpredictable, in no small part as a consequence of an intricate federal Code of Criminal Procedure imposed on the States by this Court in pursuit of perfect justice....The Court now moves to bring perfection to the alternative.”⁴⁶ Even though the criminal justice system *is* the adversarial justice model, plea bargaining is a form of alternative dispute resolution. “Criminal justice today is for the most part a system of pleas, not a system of trials.”⁴⁷

The right to agree to a plea is a defendant’s Constitutional right.⁴⁸ Under the Sixth Amendment, the right to effective assistance of counsel has been extended to include the defendant’s right to consider plea offers and accept them.⁴⁹ It also includes the right to receive good advice, which means the right to be advised that one should satisfy his or her debt to society with a favorable agreement.⁵⁰ On March 23, 2012, the Court wrote, the “Court today

⁴⁰ Yogacharya Dr. Ananda Balayogi Bhavanani, "Yoga Sutras of Patanjali: An Overview," International Centre for Yoga Education and Research, (last viewed on Mar. 23, 2012, <http://icyer.com/documents/patanjali.pdf>) at 8 citing Yoga Sutra II. 40- II.41.

⁴¹ M. G. Chitkara, *Kashmir Shaivism: Under Siege*, 69 (A.P.H. Publishing Corporation, 2002).

⁴² Hillari Dowdle, “Path to Happiness,” *Yoga Journal* (last viewed on March 24, 2012, <http://www.yogajournal.com/wisdom/2565>).

⁴³ *Missouri v. Frye*, 2012 U.S. LEXIS 2321, 16 (2012).

⁴⁴ Hillari Dowdle, “Path to Happiness,” *Yoga Journal* (last viewed on March 24, 2012, <http://www.yogajournal.com/wisdom/2565>).

⁴⁵ *Missouri*, at 36.

⁴⁶ *Missouri*, at 34.

⁴⁷ *Cooper v. Lafler*, 2012 U.S. LEXIS 2322, 14 (2012).

⁴⁸ “Plea bargains have become so central to today’s criminal justice system that defense counsel must meet responsibilities in the plea bargain process to render the adequate assistance of counsel that the Sixth Amendment requires at critical stages of the criminal process.... As a general rule, defense counsel has the duty to communicate formal prosecution offers to accept a plea on terms and conditions that may be favorable to the accused.” *Missouri v Frye*, 2012 U.S. LEXIS 2321, 3-4 (2012).

⁴⁹ *Missouri v Frye*, 2012 U.S. LEXIS 2321, 2 (2012).

⁵⁰ *Cooper v. Lafler*, 2012 U.S. LEXIS 2322, 24 (2012). “The decisions mean that what used to be informal and unregulated deal making is now subject to new constraints when bad legal advice leads defendants to reject favorable plea offers.”

opens a whole new field of constitutionalized criminal procedure: plea-bargaining law.”⁵¹ The Court held that if the defendant failed to agree to a satisfying offer from the state that she, he, or others in the same position would have ordinarily accepted, then counsel has failed to provide effective representation.⁵²

This holding did not answer every question regarding a defendant’s right to plea. Yet, in acknowledging the questions that remain to be argued, the Court discussed the relevance of the “art of negotiation.”⁵³ One concern that was raised is whether a positional negotiation style that fails to close a deal can be considered ineffective assistance. In his dissent, Justice Scalia wrote,

If an attorney's “personal style” is to establish a reputation as a hard bargainer by, for example, advising clients to proceed to trial rather than accept anything but the most favorable plea offers? It seems inconceivable that a lawyer could compromise his client’s constitutional rights so that he can secure better deals for other clients in the future; does a hard-bargaining “personal style” now violate the Sixth Amendment?...[C]ounsel’s plea-bargaining skills...must now meet a constitutional minimum.”⁵⁴

Applying *santosh*, then the answer to Justice Scalia’s question would be, yes.⁵⁵ If a defendant can satisfy the state and be satisfied by a deal, then that satisfaction is more important than those additional gains that failed to be agreed upon or a future client’s potential leverage.⁵⁶ Last year, no one would have written that defendants have a right to plea bargain.⁵⁷ This year, the Court noted that counsel’s concern for his or her reputation as a hard bargainer cannot obstruct the defendant’s right to receive, consider, or accept agreements.⁵⁸

⁵¹ *Missouri*, at 34.

⁵² *Cooper v. Lafler*, 2012 U.S. LEXIS 2322, 14 (2012). “A defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.

⁵³ *Missouri*, at 19.

⁵⁴ *Missouri*, at 33.

⁵⁵ *Id.*

⁵⁶ *Missouri*, at 19. *Contra*. “Bargaining is, by its nature, defined to a substantial degree by personal style. The alternative courses and tactics in negotiation are so individual that it may be neither prudent nor practicable to try to elaborate or define detailed standards for the proper discharge of defense counsel's participation in the process.”

⁵⁷ Compare Robert Barnes, Supreme Court expands plea bargain rights of criminal defendants, *Washington Post*, March 21, 2012 (last viewed on March 24, 2012 http://www.washingtonpost.com/politics/supreme-court-expands-plea-bargain-rights-of-criminal-defendants/2012/03/21/gIQA6vIZSS_story.html) with *Brady v. United States*, 397 U.S. 742 (1970) and *Santobello v. New York*, 404 U.S. 257 (1971), which specify that plea bargains create legal standards that are rooted in contract law, e.g. voluntariness and breach.

⁵⁸ U.S. Const. Am. IV. *Missouri v. Frye*, 2012 U.S. LEXIS 2321 (2012). *Cooper v. Lafler*, 2012 U.S. LEXIS 2322 (2012). *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674.

Additional plea bargain-based challenges may continue to develop in the future as new defendants seek to satisfy themselves with a plea.⁵⁹ Appeals may challenge the Court's dicta, which stated that there is no right to be made an offer by the state and no right guaranteeing that a federal judge will accept the state's offer.⁶⁰ But since satisfaction and agreement are so central to the criminal justice system, this right may be carved out under a different Constitutional Amendment.⁶¹

[T]he State insists there is no right to receive a plea offer. For [many] reasons, the State contends, it is unfair to subject it to the consequences of defense counsel's inadequacies, especially when the opportunities for a full and fair trial, or, as here, for a later guilty plea albeit on less favorable terms, are preserved. The State's contentions are neither illogical nor without some persuasive force, yet they do not suffice to overcome a simple reality. The reality is...[i]n today's criminal justice system,...the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.⁶²

Though *santosha* would urge advocates to be satisfied with the current status of defendants' rights, it would also an exercise of *santosha* to observe how future agreements could be guaranteed to satisfy defendants and the state in every case.

B. *Tapas*

Tapas means heat in Sanskrit.⁶³ *Tapas* refers to the "inner heat" created by the practice of physical austerity.⁶⁴ This practice is found in Jainism, Buddhism, and Hinduism.⁶⁵ *Tapas* is both the purification created by asceticism and the asceticism itself.⁶⁶ *Tapas* is always voluntary.⁶⁷ "These types of voluntary practices include such things as seclusion or isolation."⁶⁸ Though these *tapas* are undesirable and painful, both mentally and physically, even as the

⁵⁹ Cooper v. Lafler, 2012 U.S. LEXIS 2322, 52 (2012) (Scalia dissenting, "Today, however, the Supreme Court of the United States elevates plea bargaining from a necessary evil to a constitutional entitlement.")

⁶⁰ Cooper v. Lafler, 2012 U.S. LEXIS 2322, 21 (2012).

⁶¹ Cooper v. Lafler, 2012 U.S. LEXIS 2322, 33 (2012). "Today's decision leaves open to the trial court how best to exercise that discretion in all the circumstances of the case." This dicta may likely be cited in the future when new challenges for the right to bargain begin to arise.

⁶² *Missouri*, at 16-18.

⁶³ Sarah Hammett, *Tapas – Hindu Ascetic Heat*, Mahavidya, (2008) (last viewed on Mar. 26, 2012, <http://www.mahavidya.ca/wp-content/uploads/2008/06/hammett-sarah-tapas.pdf>).

⁶⁴ Encyclopedia Britannica, (last viewed on Mar. 26, 2012, <http://www.britannica.com/EBchecked/topic/583081/tapas>).

⁶⁵ "The concept of destructive tapas is observed both in the Rg Veda and the Atharva Veda." Sarah Hammett, *Tapas – Hindu Ascetic Heat*, Mahavidya, (2008) (last viewed on Mar. 26, 2012, <http://www.mahavidya.ca/wp-content/uploads/2008/06/hammett-sarah-tapas.pdf>). Encyclopedia Britannica, (last viewed on Mar. 26, 2012, <http://www.britannica.com/EBchecked/topic/583081/tapas>).

⁶⁶ *Id.*

⁶⁷ Sarah Hammett, *Tapas – Hindu Ascetic Heat*.

⁶⁸ *Id.*

aesthetic destroys himself or herself, she or he destroys the power of the opponent to inflict pain.⁶⁹

In the context of plea bargaining, positional bargaining is wrong. But, when a negotiator seems to have no choice other than to retreat or submit, then the negotiator has one final move—self-inflicted austerity measures. In *Usual Suspects*, Verbal recounts how Keyser Söze's family was taken hostage.⁷⁰ Rather than see his family tortured, Keyser Söze murdered his own family in front of the kidnappers.⁷¹ "Then he showed those men of will what will really was."⁷² After killing his family, he set on a course for revenge.⁷³ This scene expresses *tapas*.⁷⁴ Keyser Söze seemed to be at the mercy of the attackers.⁷⁵ But instead, Keyser Söze took austerity measures.⁷⁶ He eliminated that which the opponents threatened to take away from him so that it could no longer be used as their bargaining chip.⁷⁷ Yet, austerity measures cannot realistically ever be violent because negotiation ceases when force is used. Though sacred texts, like the *Bhagavad Gita*, describe heroic acts of war and violence, the violence is a metaphor for the process of achieving inner peace.⁷⁸ Nonviolent austerity is one way to achieve inner peace.⁷⁹

We have seen nonviolent austerity measures used in world affairs time and again. World leaders have taken austerity measures in order to avoid violence and avoid being driven into unwanted bargains.⁸⁰ Following the collapse of the Soviet Union, rather than concede to the U.S., which had been executively enforcing an embargo against Cuba since 1963,⁸¹ Cuba resisted U.S. imperialism by increasing austerity measures.⁸² Among other austerity measures taken during the Cuban's Special Period, Cuba decreased food rations, and promoted the conservation of oil and other resources.⁸³ The U.S. moved to disrupt Cuba's plan by tightening

⁶⁹ See e.g., Kristen F. Grunewald and Priya Nath, *Defense-Based Victim Outreach: Restorative Justice in Capital Cases*, 15 Cap. Def. J. 315, 323, n. 68 (2003). Ancient Scriptures stated that, through forms of penance such as confession and austerity, a sinner is freed from guilt. *Id.* at P8 (quoting Manu Dharma Shastras 11.228-34). Sarah Hammett, *Tapas – Hindu Ascetic Heat*, Mahavidya, (2008) (last viewed on Mar. 26, 2012, <http://www.mahavidya.ca/wp-content/uploads/2008/06/hammett-sarah-tapas.pdf>). Encyclopedia Britannica, (last viewed on Mar. 26, 2012, <http://www.britannica.com/EBchecked/topic/583081/tapas>).

⁷⁰ USUAL SUSPECTS (MGM Studios 1995).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Sarah Hammett, *Tapas – Hindu Ascetic Heat*.

⁷⁵ USUAL SUSPECTS (MGM Studios 1995).

⁷⁶ *Id.* Sarah Hammett, *Tapas – Hindu Ascetic Heat*.

⁷⁷ USUAL SUSPECTS (MGM Studios 1995).

⁷⁸ Stephen Mitchell, *Bhagavad Gita: A New Translation*, (Three Rivers Press, 2002).

⁷⁹ *Id.*

⁸⁰ "Greece Passes New Austerity Deal Amid Rioting," USA Today, Feb. 12, 2012, <http://www.usatoday.com/money/world/story/2012-02.../greece=riots.../1-58k> (discussing Greece-European Union relations).

⁸¹ "Pope slams 'unfair burden' of US embargo on Cuba," ABC News, Mar. 29, 2012.

<http://www.abc.net.au/news/2012-03-29/pope-slams-us-embargo-on-cuba/3919116>.

⁸² See, Arthur Morgan, "The Power of Community: How Cuba Survived Peak Oil," Institute for Community Solutions. (last viewed on Mar. 26, 2012, <http://www.powerofcommunity.org/cm/index.php>).

⁸³ *Id.*

the embargo during the Special Period.⁸⁴ The Cuban Democracy Act⁸⁵ and the Helms Burton Act⁸⁶ attempted to choke international trade with Cuba.⁸⁷ Even as the European Union, international agencies, and nations⁸⁸ independently condemned the U.S. treatment of Cuba, Cuba took further austerity measures by reducing any oil-run mechanization and turning to sustainable and renewable resources in order to meet demands and attract new investors.⁸⁹ With increased manual labor and reduced consumption of meat, “Cubans witnessed a significant drop in the rates of heart disease, diabetes, [and] strokes.”⁹⁰ Throughout this period, they also persisted in providing free education, cultural programs, and medical treatment in line with their Constitutional mandate.⁹¹

In a great demonstration of strategy and will, Cuba’s austerity measures worked. Today, Cuba exports doctors and pharmaceutical drugs.⁹² Tourism is bustling.⁹³ Cuba is renowned for its green alternatives⁹⁴ and farming industry.⁹⁵ Cuba boasts the second highest literacy rate in the

⁸⁴ 22 USC 69 § 6001. 22 U.S.C. §§ 6021–6091.

⁸⁵ 22 USC 69 § 6001.

⁸⁶ 22 U.S.C. §§ 6021–6091.

⁸⁷ *Infra* note.

⁸⁸ EU Council Regulation (EC) No 2271/96, “Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom,” Nov. 22, 1996, *Official Journal L* 309, 29/11/1996 P. 0001 – 0006; “Canada’s Response to the Helms-Burton Act,” Jan. 18, 1996, Department of Foreign Affairs and International Trade, Oct. 21, 2008 (last viewed on Mar. 26, 2012, <http://nscuba.blogspot.com/2008/10/canadas-response-to-helms-burton-act.html>) (“We have made it clear time and again to the U.S. Congress and Administration that Canada will not tolerate any interference in the sovereignty of Canadian laws.”) See, Jeffrey Dunning, *The Helms-Burton Act: A Step in the Wrong Direction for United States Policy Toward Cuba*, 54 J. Urban and Contemporary L. 213 (2003).

⁸⁹ See, Arthur Morgan, “The Power of Community: How Cuba Survived Peak Oil,” Institute for Community Solutions. (last viewed on Mar. 26, 2012, <http://www.powerofcommunity.org/cm/index.php>).

⁹⁰ Craig Mackintosh, A Lesson for Our Future – the Cuban Experience:

Alternatives to Political Systems, Community Projects, Food Shortages, People Systems, Society, Urban Projects, Village Development, peak oil,” The Permaculture Research Institute of Australia, Jun. 29, 2011 (last viewed on Mar. 26, 2012, <http://permaculture.org.au/2011/06/29/a-lesson-for-our-future-the-cuban-experience/>). Rory Carroll, Economic crisis boost to health of Cubans, Sep. 26, 2007, *The Guardian UK* (last viewed on Mar. 26, 2012 <http://www.guardian.co.uk/world/2007/sep/27/cuba.international>).

⁹¹ Constitution of the Republic of Cuba, 1992, Article V, IX, and XDIII (available at http://www.cubanet.org/ref/dis/const_92_e.htm).

“Cuba’s ratio of teachers to students is akin to Sweden’s; people who want to go to college go to college.” Bill McKibben, “The Cuba diet: What will you be eating when the revolution comes?,” Apr. 2005, *Harper’s Magazine* (last viewed on Mar. 26, 2012 <http://www.harper.org/archive/2005/04/0080501>).

⁹² See, Steve Clemons, “Cuba’s Soft Power: Exporting Doctors Rather Than Revolution,” *Washington Post*, Nov. 12, 2009 (last viewed on Mar. 26, 2012, http://www.huffingtonpost.com/steve-clemons/cubas-soft-power-exportin_b_355373.html). See, Bill McKibben, “The Cuba diet: What will you be eating when the revolution comes?,” Apr. 2005, *Harper’s Magazine* (last viewed on Mar. 26, 2012 <http://www.harper.org/archive/2005/04/0080501>).

⁹³ Bill McKibben, “The Cuba diet: What will you be eating when the revolution comes?,” Apr. 2005, *Harper’s Magazine* (last viewed on Mar. 26, 2012 <http://www.harper.org/archive/2005/04/0080501>).

⁹⁴ See e.g., Jelvys Bermúdez Acosta, *Rehabilitación de zonas contaminadas con hidrocarburos.: Biorremediación de residuos petrolizados. Estudio de caso en la comunidad costera de "Reina", Cienfuegos, Cuba* (Editorial Académica Española, 2012).

world.⁹⁶ The U.S. is ranked 45th in literacy.⁹⁷ Instead of crippling Cuba, the codification and strict enforcement of embargo, which deepened Cuba's self-imposed austerity measures, ended up costing the U.S. disproportionately more than it cost Cuba.⁹⁸

The embargo, without question, has caused substantial economic damage to the U.S., such that the Cuba Policy Foundation has estimated that the U.S. loses between USD 126 million and USD 252 million in agricultural sales each year. The embargo also increases the worldwide costs of doing business, driving up the price of imported goods. Countries that trade with the U.S. have to certify that their products do not contain Cuban intermediate or raw materials. The aforementioned certification process is a significant drain on time and resources. Overall, estimates indicate that the embargo on Cuba has cost the United States up to USD 4.84 billion annually, and by the year 2000, it was estimated to have cost a total of USD 67 billion in economic losses. Furthermore, this embargo has failed to achieve its stated goals of removing the Castro brothers from power....The embargo has not effectively wrought the expected damage to the Cuban economy. Foreign Direct Investment (FDI) in Cuba was a paltry USD 2 million in 1990; after the passage of Helms-Burton, FDI rose to USD 74 million by 2000, and in 2008 a full USD 185 million reached Cuban shores.⁹⁹

Rather than sacrifice its sovereignty, Cuba cut itself off from what the U.S. had to offer and was attempting to leverage by withholding.¹⁰⁰ Castro's cause built momentum and caused the people to rally in spite of the U.S.¹⁰¹ The *Bhagavad Gita*, a sacred text in Yoga, states that in negotiation, "Krishna believed that not getting ones' needs met was worse than death....If however, one could not satisfy his or her own needs by peaceful negotiation, then one has no other choice but to go to war."¹⁰² This war is not a physical war, but a war against one's own

⁹⁵ Craig Mackintosh, A Lesson for Our Future – the Cuban Experience.

⁹⁶ Wikipedia: List of Countries by Literacy Rate (last viewed on Mar. 26, 2012, http://en.wikipedia.org/wiki/List_of_countries_by_literacy_rate).

⁹⁷ Wikipedia: List of Countries by Literacy Rate (last viewed on Mar. 26, 2012, http://en.wikipedia.org/wiki/List_of_countries_by_literacy_rate).

⁹⁸ "Helms-Burton Act: Resurrecting the Iron Curtain," Council on Hemispheric Affairs, Jun. 10, 2011 (last viewed on Mar. 26, 2012, <http://www.coha.org/helms-burton-act-resurrecting-the-iron-curtain/>).

⁹⁹ "Helms-Burton Act: Resurrecting the Iron Curtain," Council on Hemispheric Affairs, Jun. 10, 2011 (last viewed on Mar. 26, 2012, <http://www.coha.org/helms-burton-act-resurrecting-the-iron-curtain/>). Bill McKibben, "The Cuba diet: What will you be eating when the revolution comes?," Apr. 2005, Harper's Magazine (last viewed on Mar. 26, 2012 <http://www.harpers.org/archive/2005/04/0080501>).

¹⁰⁰ Today the U.S. is Cuba's largest food supplier, as a result of the Trade Sanctions Reform and Export Enhancement Act (TSRA) signed into law in 2000, were allowed to sell food and agricultural products to Cuba on a cash basis. Office of Global Analysis, FAS, USDA, Agriculture Situation Report, Mar. 2008 (last viewed on <http://www.fas.usda.gov/itp/cuba/CubaSituation0308.pdf>).

¹⁰¹ "Helms-Burton Act: Resurrecting the Iron Curtain," Council on Hemispheric Affairs, Jun. 10, 2011 (last viewed on Mar. 26, 2012, <http://www.coha.org/helms-burton-act-resurrecting-the-iron-curtain/>).

¹⁰² Aalok Sikand, *ADR Dharma: Seeking a Hindu Perspective on Dispute Resolution from the Holy Scriptures of the Mahabharata and the Bhagavad Gita*, 7 Pepp. Disp. Resol. L.J. 323, 353-354 (2007).

weaknesses. Positional bargaining led to Cuba's austerity measures—a war against their own consumption practices—and this, in effect, waged a successful war against U.S. imperialism.¹⁰³

C. *Svadyaya*

Svadyaya is the study of the scriptures in order to know more about oneness and one's inner person.¹⁰⁴ *Svadyaya* helps ADR practitioners observe religious inclinations and be sensitive to them.¹⁰⁵ In a very practical sense, it is not necessary to study religious scriptures, as much as familiarize oneself with cultural adaptations of religious doctrines.¹⁰⁶ Religious groups sometimes interpret scriptures in nonliteral ways or place an emphasis on some scriptures over others. Initially, studying a holy book would not provide information about these subtleties. Yet, refining ones' self with the study of culture would.¹⁰⁷ A person who can respectfully observe the nuances of an opponent's religious culture will give fewer reasons for the opponent to reject the resolution.¹⁰⁸

[C]ulture can affect the negotiation. Culture can influence the availability, accessibility, and activation of the social knowledge structures or constructs that inform a negotiator's cognition of the negotiation context. This can lead to negotiators not sharing the same understanding of an issue or the same framework for thinking about the issues involved in the negotiation.¹⁰⁹

Familiarization with religious culture helps one choose effective wording.¹¹⁰ For example, Katy Perry, the recording artist, said in Rolling Stone Magazine, "I wasn't ever able to

¹⁰³ "Helms-Burton Act: Resurrecting the Iron Curtain," Council on Hemispheric Affairs, Jun. 10, 2011 (last viewed on Mar. 26, 2012, <http://www.coha.org/helms-burton-act-resurrecting-the-iron-curtain/>).

¹⁰⁴ Satvinder Singh Juss, *The Secular Tradition in Sikhism*, 11 Rutgers J. Law & Relig. 270, 335 (2010).

¹⁰⁵ *Id.*

¹⁰⁶ *Infra* notes.

¹⁰⁷ Giyang An, *Enhancing the Effectiveness of Mediation in Korean-American Family Disputes: Cultural Sensitivity Training for Mediators And Co-Mediation Teams*, 11 Cardozo J. Conflict Resol. 557, 579 (2010). "In analyzing how to inject cultural understanding into the mediation process, one must be careful when dealing with the term "culture." Depending on how it is interpreted, it can be more divisive, instead of serving as a reference point for evaluating and understanding the parties involved."

¹⁰⁸ Jessica R. Dominguez, *The Role of Latino Culture in Mediation of Family Disputes*, 1 J. Legal Advoc. & Prac. 154, 161-162 (1999). "Cultural factors play a relevant role in dispute resolution. Advocates of cultural consideration contend that judges and mediators should be aware of, and respond to, persons' different cultures."

¹⁰⁹ Carrie Menkel-Meadow, *The Trouble With The Adversary System In A Post-Modern, Multi-Cultural World*, 1 J. Inst. Stud. Leg. Eth. 49, 83-84 (1996).

¹¹⁰ Parties basically aspire to go beyond their needs. On the one hand, they approach the mediation parties as moral agents, capable of transcending their needs and biases by being profoundly human. On the other hand...the tendency toward the other is natural and is not a manifestation of pure reason. Parties to mediation are naturally connected to one another and need to strengthen their interrelationship. Related perceptions such as humanistic mediation and restorative justice repeat the same idea of connectedness, sometimes accompanied by religious sensitivities. Michal Alberstein, *Forms of Mediation and Law: Cultures of Dispute Resolution*, 22 Ohio St. J. on Disp. Resol. 321, 322 (2007).

say I was ‘lucky’ because my mother would rather us say that we were blessed, and she also didn’t like that lucky sounded like Lucifer.”¹¹¹ Though luckiness and gambling are not condemned directly in scripture,¹¹² many Christians believe that faith cannot coexist with “luck” in the Christian lifestyle or vocabulary.¹¹³ During dispute resolution, phrases like “good luck,” “Lucky, you!” or “you’re in luck,” could have a negative effect. Though the average person is aware that phrases such as “oh my god” or “god--- it” might offend Christians, one may not reflect on the fact that taking god’s name in vein, which violates the Ten Commandments¹¹⁴ could insinuate that one would readily violate other commandments by bearing false witness.¹¹⁵ The more you study the scriptures—or more importantly, the religious cultural climate—the more successfully you can avoid pitfalls.

Less accessible in *svadhyaya*, but still common, is the use of a phrase that may offend Natives--“moving up the totem pole.”¹¹⁶ Not every Native tribe includes totemic religious symbolism or ritual.¹¹⁷ Yet, the totem pole represents a universal form of “religious expression,” and is generally respected in Native culture.¹¹⁸

¹¹¹ Brittany Talarico, “Katy Perry Brings Light to Religious Upbringing in 'Rolling Stone',” OK! Magazine, Aug. 3, 2010, (Last viewed on Mar. 27, 2012, <http://www.okmagazine.com/news/katy-perry-brings-light-religious-upbringing-rolling-stone>).

¹¹² The following scriptures also mention chance occurrence as a nonevent or a positive happening: “If a bird’s nest chance to be before thee in the way in any tree, or on the ground, whether they be young ones, or eggs, and the dam sitting upon the young, or upon the eggs, thou shalt not take the dam with the young,” Deuteronomy 22:6; “And the young man that told him said, As I happened by chance upon mount Gilboa, behold, Saul leaned upon his spear; and, lo, the chariots and horsemen followed hard after him,” 2 Samuel 1:6; “I returned, and saw under the sun, that the race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favour to men of skill; but time and chance happeneth to them all,” Ecclesiastes 9:11; “And by chance there came down a certain priest that way: and when he saw him, he passed by on the other side,” Luke 10:31. In the following scriptures, the Bible mention gambling in a positive or acceptable context: “Joshua then cast lots for them in Shiloh in the presence of the LORD, and there he distributed the land to the Israelites according to their tribal divisions,” Joshua 18:10; “And they cast lots, as well the small as the great, according to the house of their fathers, for every gate. And the lot eastward fell to Shelemiah. Then for Zechariah his son, a wise counsellor, they cast lots; and his lot came out northward,” Nehemiah 10:34; “And we cast the lots among the priests, the Levites, and the people, for the wood offering, to bring it into the house of our God,” Acts 1:23-26. These verses demonstrate that it is Christian culture, a collective understanding of where to best focus the spiritual direction of their community, that frowns upon the use of the word “luck,” in the context of chance. Christians synergize these scriptures with Christian cultural beliefs through Proverbs 16:33, “The lot is cast in the lap, but its every decision is from the Lord.” *Id.*

¹¹³ See e.g., “The [C]hristian and “good luck.” The Foolish Galatian, Oct. 26, 2008 (Last viewed on Mar. 27, 2012, <http://thefoolishgalatian.wordpress.com/2008/10/26/the-christian-and-good-luck/>).

¹¹⁴ Exodus 20:7; Deuteronomy 5: 11.

¹¹⁵ Exodus 20:16; Deuteronomy 5: 20.

¹¹⁶ “Things NEVER to Say to American Indian Coworkers,” Diversity, Inc. (Mar. 27, 2012, <http://diversityinc.com/things-not-to-say/things-never-to-say-to-american-indian-coworkers/>).

¹¹⁷ Houston Smith, *The World’s Religions*, 375 (Harper San Francisco, 1999).

¹¹⁸ This concept is originally Emile Durkheim’s. Fiona Bowie briefly discusses it. Fiona Bowie, *The Anthropology of Religion*, 125 (Blackwell Publishing, 2006). See also, *The World’s Religions* at 375.

The totem animal bonds the human members of its clan distinctly to one another, while acting as their mate, friend, guardian, and helper....They in turn, respect it and refuse to injure it unless in dire distress. The totem animal serves as the clan's emblem, and at the same time symbolizes the ancestor or hero whom the clan commemorates.¹¹⁹

The use of "climbing up the totem pole" expresses a flippant attitude toward cultural sensitivity and it could also insinuate that a person would turn on his or her family and vital connections in exchange for upward mobility.¹²⁰

One of the greatest factors impacting the mediation process today, however, is the multi-cultural impact brought by the diversity of ethnic participants now taking part in the system. The cultural...differences often require an understanding of the cultural role of parents and the familial roles within a particular family.¹²¹

Suggesting that a native opponent would abandon family in pursuit of individual status could upheave any groundwork laid in the resolution of a conflict.

A final example can be observed in the phrase "survival of the fittest."¹²² Clearly, this phrase echoes Darwin's theory of evolution, specifically, natural selection.¹²³ A speaker may not intend to insinuate an anti-creationist position or may not affiliate the context of his or her use with a denial of God. Yet, to a Muslim, for example, "survival of the fittest" could be a form of anti-creationism dialogue.¹²⁴ Once a person believes that his or her religious culture is under attack, then it is probable that he or she will shut down or retaliate in some way.¹²⁵ Either way, a bit of study that uncovers Muslim culture's disdain for the theory of evolution, and an observance of one's language choice could, go add an additional positive variable to the resolution process.¹²⁶ "These culturally variable features shape the way people understand their

¹¹⁹ *The World's Religions* at 375. *Contra*, Claude Levi-Strauss. Fiona Bowie briefly discusses it. Fiona Bowie, *The Anthropology of Religion*, 128 (Blackwell Publishing, 2006).

¹²⁰ *Id.*

¹²¹ Jessica R. Dominguez, *The Role of Latino Culture in Mediation of Family Disputes*, 1 J. Legal Advoc. & Prac. 154, 160 (1999).

¹²² See e.g., "Theory of Natural Selection," Biology Online (last viewed on Mar. 29, 2012, http://www.biology-online.org/2/10_natural_selection.htm).

¹²³ *Id.*

¹²⁴ *Id.* Taner Edis, "Between Nasr and Ateş: What understanding of evolution do science educators want?," PowerPoint Presentation, Truman State University (last viewed on Mar. 27, 2012 phonon.truman.edu/~edis/talks/NasrAtes.pptx).

¹²⁵ See e.g., Jonathan Turley, "Singer Faces Two Years in Prison For Tearing Up Bible and Insulting Catholic Church," Jonathan Turley: Res Ipsa Loquitur (Mar. 11, 2010, <http://jonathanturley.org/2010/03/11/singer-faces-two-years-in-prison-for-tearing-up-bible-and-insulting-catholic-church/>).

¹²⁶ Taner Edis, "Between Nasr and Ateş: What understanding of evolution do science educators want?," PowerPoint Presentation, Truman State University (last viewed on Mar. 27, 2012 phonon.truman.edu/~edis/talks/NasrAtes.pptx). See e.g., "Theory of Natural Selection," Biology Online (last viewed on Mar. 29, 2012, http://www.biology-online.org/2/10_natural_selection.htm).

experiences.”¹²⁷ Rather than hope that “they do not determine them,” one should merely anticipate that “[c]ulture [will be] the "lens" that refracts the issues or disputes to be negotiated.”¹²⁸

[T]hose who seek greater harmonization of human rights norms, commercial trade rules, or other legal standards may view culture as simply a monkey wrench in the machinery of global consensus and cooperation. In such debates, culture is often conceptualized as fundamentally pre-modern, something "they" cling to, but that "we" have long since jettisoned....[But rationalizing] cultural considerations out of the equation is simply not an option....law lives entwined with culture.¹²⁹

Studying the interpretation of scripture in religious cultures can help one avoid offending an opponent, as well as possibly “open ways of conceiving of solutions to problems.”¹³⁰

D. *Ishvarapranidhana*

Ishvarapranidhana is surrender to (or worship of) God.¹³¹ God is not commonly discussed in professional circles. Yet, in this article, God can be discussed in terms of surrender to an unchangeable force.¹³² A belief that there exist forces that are beyond our control is not a spiritual belief, it is fact. Forces beyond our individual control include the weather, traffic, and natural disasters. Accepting forces that are beyond our control, and the fact that some greater force may deeply affect the outcome of our disputes, can provide the practitioner and the client

¹²⁷ Carrie Menkel-Meadow, *The Trouble With The Adversary System In A Post-Modern, Multi-Cultural World*, 1 J. Inst. Stud. Leg. Eth. 49, 83 (1996).

¹²⁸ Carrie Menkel-Meadow, *The Trouble With The Adversary System In A Post-Modern, Multi-Cultural World*, 1 J. Inst. Stud. Leg. Eth. 49, 83 (1996). See also, Jacqueline Nolan-Haley, *Self-Determination in International Mediation: Some Preliminary Reflections*, 7 Cardozo J. Conflict Resol. 277, 279-280 (2006).

Notwithstanding the strong emphasis on self-determination in private mediation, scholars have observed a disconnect between its theory and practice. While self-determination appears to be an explicit value in private mediation, in fact, much depends upon the "frame" in which mediation is conducted and the place and the culture in which mediation takes place....More importantly, the lens of culture is a critical component in shaping and understanding party self-determination. Western, individualist cultures typically honor a form of self-determination that gives the disputing parties significant control over deciding the outcome. In contrast, more traditional, collectivist cultures value the interests of the community over those of the individual in deciding outcomes. Cultural considerations also influence mediator behavior.

¹²⁹ Paul Schiff Berman, *Lawrence Rosen, Law as Culture: An Invitation* (Princeton Univ. Press, 2006) and Oscar G. Chase, *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context* (New York Univ. Press, 2005), 57 Am. J. Comp. L. 249, 251, 253 (2009).

¹³⁰ Carrie Menkel-Meadow, *The Trouble With The Adversary System In A Post-Modern, Multi-Cultural World*, 1 J. Inst. Stud. Leg. Eth. 49, 64 (1996).

¹³¹ Abhyasa Ashram, "Yoga Sutras 2.35-2.45: Benefits from the Yamas and Niyamas," "Yoga Sutras 2.35-2.45: Benefits from the Yamas and Niyamas," Swamiji (Mar. 29, 2012, <http://swamij.com/yoga-sutras-23545.htm>).

¹³² *Id.*

with peace of mind.¹³³ Many seasoned practitioners already know that outcomes can be randomly decided by “what the judge ate for breakfast.”¹³⁴

The most easily accessible example of a force beyond our control is timing.¹³⁵ In 2011, Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso, conducted a study that found that “judicial rulings can be swayed by extraneous variables that should have no bearing on legal decisions.”¹³⁶ In this study, the researchers kept a daily record of judges’ two food breaks.¹³⁷ The researchers kept this log since food breaks segmented the judges’ work days.¹³⁸ During the segments, they deliberated during “three distinct “decision sessions.”” The research showed that favorable rulings in parole decisions dropped gradually following their food breaks.¹³⁹ Each session began with approximately 65% favorable rulings to approximately no favorable rulings toward the end of each session.¹⁴⁰ After a food break, the favorable rulings jumped again to 65%.¹⁴¹

This study reviewed the verdicts in 40% of all parole requests over a ten month period in Israel.¹⁴² Daily, the judges each spent six minutes per decision.¹⁴³ They considered between 14 and 35 cases each day.¹⁴⁴ Researchers believe that “repetitive action leads to intense mental resources depletion and fatigue, which leads to something called “choice overload.””¹⁴⁵ “Choice overload” makes it probable that we will choose the default option.¹⁴⁶ In this case, the default option is to deny parole.¹⁴⁷ When judges take food breaks, when a hearing is scheduled, and the fact that the default option is to deny parole, are forces that have not been challenged, are currently beyond regulation, and are beyond an individual defendant or attorney’s control.¹⁴⁸ The force in this example may not always be beyond control, but it certainly is now. Accepting these facts--that parole hearings can be determined by amorphous factors, like timing and “what the judge ate for breakfast” can give practitioners a sense of peace.

¹³³ *Id.*

¹³⁴ Paraphrase attributed to Judge Jerome Frank. Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*. (ed. Daniel Kahneman, Feb. 25, 2011), Princeton Univ.

¹³⁵ Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*. (ed. Daniel Kahneman, Feb. 25, 2011), Princeton Univ.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² “Justice Served Cold before Lunch Time: Hungry Judges Less Likely to Grant Parole,” ZME Science, Apr. 11, 2011, (Last viewed on Mar. 27, 2012 <http://www.zmescience.com/research/justice-lunch-hungry-judges-less-likely-grant-parole-315475/>).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

“There is timing in everything,” Miyamoto Musashi, writes in *A Book of Five Rings*.¹⁴⁹ “There is also timing in the Void.”¹⁵⁰ For Musashi, timing cannot be conquered, but it can be learned, sensed, and navigated to victory.¹⁵¹ A relationship with timing is developed through practice.¹⁵² The more one accepts that timing is everything, the more practitioners can continuously detect subtle cues and triggers.¹⁵³ Even when a person fails to acknowledge that timing is an uncontrollable, overriding factor, one’s opponent may not forget this fact, and may use it advantageously.¹⁵⁴ Though you must develop “a sense of timeliness,” when timing is beyond either party’s control, then “[l]et things happen in their own time.”¹⁵⁵

In ADR, the optimal way to avoid bad-timing is to preemptively create a structure for dealing with conflict.¹⁵⁶ When a family, an institution, or corporation have an internal dispute resolution mechanism that is known to work, then people expect to be subject to its rules and timing.¹⁵⁷ Formulating machinery will shield you from having to force the timing or rely on a particular individual’s timing.¹⁵⁸ A mechanism invites its own timing.¹⁵⁹ Relying on the mechanism supplies peace of mind to those who can accept that it is a force beyond the participants’ control. Standardizing dispute resolution also helps “to reduce time and costs;” “[i]mprove or maintain the relationship;” “[a]chieve a satisfactory outcome;” “[d]eal with emotions;” and “[a]void future disputes.”¹⁶⁰

III. Conclusion

In conclusion, observance of *saucha*, *santosha*, *tapas*, *svādhyāya*, and *ishvarapranidhana* can help clarify directives and perspectives, create agreement, disarm your enemies and seize an advantage, bridge cultural gaps, and accept the inevitable or insurmountable. Eastern philosophy need not be observed dogmatically, yet linking *Yoga Sutras’ Niyama* to ADR revives the text while bolstering contemporary problem-solving with ancient wisdom.

¹⁴⁹ Miyamoto Musashi, *A Book of Five Rings: The Classic Guide to Strategy* (trans. Victor Harris, The Overlook Press, 1982) 48.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Michael Sean Quinn, *The Analects for Lawyers: Variations upon Confucian Wisdom*, 34 Tex. Tech L. Rev. 933, 987 (2003).

¹⁵⁶ Shireen Sondhi, "Is Timing Everything?," *Up-Date Magazine*, May 2011 (last viewed on Mr. 28, 2012, http://www.sfhgroup.com/blogs/news_and_articles/2011/06/01/is-timing-everything/).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*