

The Yogic Art of Advocacy: CLANT Bali Conference June 2024

To be a truly **effective** advocate, we need to understand and access what it is to be a truly effective human being. Not a lawyer-but a human. How else could we possibly represent the myriads of fellow humans out there who blindly trust us with their lives and their liberty. We owe it to them to be the best *humans* we can be in order to be the best *advocates* for them.

But there are barriers to us being effective humans, as we live at a point in time where the dimensions of disease and suffering, that once belonged overwhelmingly to discussions about the physical body, now belong to discussions about the diseases and suffering of the mind.

Perhaps eastern practices, yogic practises- can provide solutions for us all.

Before we begin that exploration let me place this collective group into a unifying context. If you are in this room, you are highly likely to meet the definition of a Type A Personality. 90% of the legal profession falls within this category. A snap shot of the defining features of a Type A personality are- highly driven, highly competitive, highly goal orientated, highly judgemental, generally of oneself, in particular if you're a woman.

In essence, Type A personalities tend to get their feelings of self-worth through what they achieve rather than our relationships with others. Rather than for example how we perform as partners, or parents, or daughters and sons, or carers, or as a friend.

A recent Bloomberg study on the mental wellbeing of lawyers showed that lawyers worked an average 53 hours per week. If you divide that into a five day week, that's 11 hrs per day; divided by a six day week that's 8 hours a day. Any non-lawyer friend is likely to tell you that this is not normal! Yet many of us lawyers wear stress or long work hours like a badge of honour, as a symbol of our productivity and strong work ethic.

Perhaps it's time for us Personality A Types- to question ourselves.

In a recent study examining nationwide the health of lawyers, the following alarming statistics were disclosed:

- i. 75% suffered anxiety
- ii. 40% suffered from depression
- iii. 45% suffered issues in personal relationships
- iv. 40% suffered physical health issues
- v. 75% suffered from disrupted sleep
- vi. 15% laboured under drug and alcohol issues- but that figure is likely higher as most people underreport their consumption and don't recognise problematic drinking habits.

52% of surveyed lawyers reported experiencing burnout in their role, a record high. If you are sitting there thinking, I labour under none of those ailments, you are in the lucky 10% minority. And just stop and reflect, it's almost certain that the person sitting next to you, or in front of you or behind you, is or has suffered from mental unwellness.

And judges are not immune from suffering. 63% frequently and consistently report experiencing secondary trauma from their work. It's not only the content but the sheer volume of work.

So..... on that truly positive note, I invite you all to come on this journey with me. A journey into the practice of yoga. Let's see what Yoga might have to offer the agitated mind of the Advocate.

The word YOGA- is derived from the Sanskrit root "yuj". It means to **unite**. To join. It is a practise which has survived and flourished throughout the centuries, perhaps unsurprisingly given its foundational principles lie in tantric sexual practises.

At its core the practise of yoga is to find balance. Not physical – but mental. At its core yoga is a search for equanimity. To find an evenness of mind under stress. It is a journey seeking to unify the mind, the body and the spirit in order to unify us all to a peaceful existence.

The practise of Yoga has 8 limbs. Each limb can be likened to the parts of a tree.

THE FIRST LIMB OF THE PRACTISE OF YOGA IS YAMA

The Roots

Yama represents the virtues of universal morality. Of the yogic tree it is represented by the roots, our foundation. We can't grow without strong roots.

For the Advocate, the virtues of universal morality are our ethical obligations which help guide our interactions with the world, with ourselves, with our opponent, with the court. In a simple but binding form, you'll find your ethical obligations in the Bar Rules or Solicitor Rules or as a judicial officer, in the oath of office.

For the Yogi, there are 5 *observances* that the yogi must follow. They may give each of you a deeper understanding to the layers beneath the black letter rules that we must follow as Advocates.

1st observance of the yogi is AHIMSA — non-violence- literally means *do not injure*.

It would be highly unusual for any one of us to engage in violent assaults at the Bar Table. The deeper meaning to "*do not injure another*" namely your opponent or colleague or the court, is to not injure another through your *words*. Many of you may have been injured by careless words. Harsh words. Words of discourtesy or simply disrespect. Sometimes, these words are pure acts of bullying. The yogic advocate does not engage in such conduct and as a result does not cause injury or harm to others.

2nd observance of the yogi is SATYA — Truthfulness

Here it signifies not only living and speaking with honesty, but also being **true** to yourself.

In the words of Jim Morrison- one of the greatest rock stars of all time "*The most important kind of freedom is to be what you really are.*"

As an advocate we need to be honest with ourselves at all times and try not to compare ourselves to others. Their truth is not your truth and we all need to find our own path in our roles as advocates for justice. Advocacy after all is all about building trust with the decision maker, be

they judge, jury or employer. Present as you truly are rather than as some caricature of a lawyer. Honest presentation is the bedrock of effective advocacy.

3rd observances of the yogi is ASTEYA — Do not steal

For the Yogi and the Advocate, stealing has a broader meaning than the material world and goes beyond the offence of larceny. Do not steal means, do not **withhold**. Do not withhold information. Do not withhold your knowledge-give it. Share it. All of it. Cases. Tactics. Approaches. Failures. Submissions. And any sharing should be without an air of arrogance, but with joyfulness in the knowledge that you can help a colleague. Every client benefits from the generous sharing between advocates of our respective knowledge.

4th observance of the Yogi is BRAMACHARYA- abstinence

Brahmacharya is used mostly in the sense of abstinence, traditionally it was a reference to sexual activity. Its deeper meaning, for both the yogi and the advocate is- use your energy wisely and with intention. Avoid excess or indulgence. We will revisit this observance when we examine the 3rd limb of yoga.

5th observance of the yogi is APARIGRAHA — To be without greed

As advocates we are greedy. Greedy to tick off as many milestones as possible as quickly as possible, to show of course, that we are high achievers. First bail, first sentence, first hearing, first trial, first appeal....The promotion, associate, senior associate, principle lawyer... the title, the status. The list we create in our mind is endless. Our **discontentment**, when we have failed to achieve what those alongside us have- is always present.

Aparigraha is about inviting the present moment to just be what it is. Notice what you have learnt, what you do know and rejoice in that achievement rather than always looking to what you lack. What you want.

There is much to be said for the yogis 5 moral observances in order to strengthen who we are as humans, as colleagues and how we behave as Advocates.

THE SECOND LIMB OF THE PRACTISE OF YOGA IS NIYAMA

The Trunk

Niyama means "**rules**" or "**laws**." These are the rules prescribed for personal observance. They differ from the ethical observances. The yogi lives by 5 main rules.

1st Rule- Cleanliness- physical health and mental clarity

I'll explore these more for the advocate when coming to the 3rd and 4th limb of the practise of yoga.

2nd Rule-Contentment: there is a purpose for everything - yoga calls it karma.

As Advocates we need to 'to accept what happens'. We have all had or will have moments where our clients results, despite our hard work and best efforts will leave us with an aching pain that a grave injustice has just occurred. We must practise acceptance when it does. If we dwell for too long, it will distract us from the next client or the client in front of us that needs us to be present in this moment in order to give our full energy, effort and skill.

3rd Rule- Discipline the way in which we use our energy.

For the Advocate- stop and pause and reflect. It's likely your career will span 30 or 40 years. We need to conserve our energy. We need to slow down in order to survive in-tact.

4th Rule- Self-Study: Self inquiry/Examination/self-reflection- in all our activities and efforts, even to the point of welcoming and accepting our limitations.

5th Rule- Faith- Surrender to the Divine

Simple acceptance of some omnipresent force larger than ourselves.

THE THIRD LIMB OF THE PRACTISE OF YOGA IS ASANA

The Branches

Asanas are the physical postures of yoga. For a tree to survive and grow the branches need to be strong and flexible. To move with the wind of life, its moods. To weather the storms in order to reach the sun.

For the **yogis** in the room, Asanas are what brings many of us joy and release. The practice of moving the body into postures has widespread benefits on our cardiovascular system, our internal organs, every joint, every muscle. Our nervous system. And of course, on our strength, balance and flexibility. The Asana's/postures ultimately provide a vehicle to find complete connection of mind, body and spirit through movement and breath. It is designed to prepare the body for seated meditation.

To the **advocates** in the room, who have zero desire to join the western tsunami of asana devotees, there are other paths to strengthen your body, and if you seek longevity in this demanding profession of law, there is a necessity almost to do so. Why? Type A Personalities have been reported to have a 4 times greater chance of developing ischemic heart disease particularly so in men. Ischemic heart disease is a major risk factor for having a heart attack and the major cause is stress.

So, to the advocates in the room- find a physical journey that strengthens your body and quietens your mind. Walk, swim, surf, run, do weights.....dance. It matters not. **Just move.** Let your mind be in free fall and with time, start simply focusing on your breath as you move. See what happens. Physical movement, beyond improving physical health has another proven benefit for the Advocate. What has been shown through neuroscientific studies is that when the body moves and the mind is free to wander and the breath calms and the right hemisphere zooms out and observes from a distance- **Creative thinking** commences.

You may well find that the greatest insights into your cases occur far away from a court or computer. That your most inspirational submissions or thoughts or your most creative arguments are first mapped out in your mind when you are physically moving.

Find your asanas, your physical postures and movement. And with time- focus on your breath when moving. Observe the benefits.

In the words of B.K.S. Iyengar "The needs of the body are the needs of the divine spirit which lives through the body. The yogi does not look heaven-ward to find God for he knows that He is within."

THE FOURTH LIMB OF THE PRACTISE OF YOGA IS PRANAYAMA

The Leaves

The breath

In Sanskrit- *Prana* means “**vital life force**”. Pranayama is the mindful use of our life force. It is the mindful use of our breath.

If you take only one learning from my presentation, one observance, one limb of the practise of yoga, I invite you to take this one- your breath.

For the non- yogis in the room Pranayama in its simplest form, is a mindful inhale and exhale of the breath. With your mouth closed, take a long slow breath from the navel, drawing up through the stomach and the chest, filling the lungs, then let the breath find a calm place at the base of the throat. Hold it. Pause. Slowly exhale. Try exhaling at a slower pace than the inhale. While exhaling visualise a long slow drawing of the navel to your spine. Then press repeat. Feel your entire nervous system find a place of calm.

I practise pranayama at the bar table before every opening address; every closing address; before I rise to cross examine a critical witness; when a judge is bullying or belittling me; when an opponent is aggressive in their interactions with me; when I am beating myself up about a question I forgot to ask; or a submission that came out all wrong. I practise pranayama at 3am in the morning when I wake with racing thoughts about a case or overwhelm from my work load.

The effects of the breath on our central nervous system are profound, and clinically proven. What is also clinically proven is that once our central nervous system has been calmed, is at

equilibrium, our ability to focus, to concentrate, to see with clarity the case in front of us, increases exponentially.

In the *Yoga Sutra*, the Yogis Bible, the practices of pranayama and asana are considered to be the highest form of purification and self-discipline for the mind and the body, respectively.

For the **Advocate**, a healthy body coupled with a calm mind is likely to be a force to be reckoned with, in any court, serving well, every client.

So, find your mindful breath.

THE FIFTH LIMB OF THE PRACTISE OF YOGA IS PRATYAHARA

The Bark

The bark of the tree protects the tree from adverse external elements. It prevents its essence, its core- the trunk and roots and sap- from spilling out and being lost. Pratyahara has many layers of complexity but a simplistic overview of it is the complete turning of your awareness inwards using the breath as your vehicle, and in the process, controlling your responses to external stimuli.

In simple terms it's the practise of meditation.

Meditation quietens your senses enough to enable you to see beyond yourself. To see things as they truly are. And **not** as **you** are.

Meditation is the practise of shedding something that every one of us in this room shares. Meditation is about shedding the **ego**.

And as Type A Personalities, that at least 90% of this room are, shedding the ego is not an easy journey to take. In fact, it's likely to take more than one life time to do so. But try we all should, as the uncontrolled ego in the Advocate, is a highly destructive force.

To win at all cost- is the ego at play.

To bully our opponent or be bullied- is likely a bruised ego on display.

To unjustifiably criticise our colleagues or undermine their success- is likely our ego at play.

To judge our colleagues, rather than assist them - is likely our ego at play.

The problem with the ego in our roles as advocates is that it hinders rather than facilitates the course of justice. It makes the cases all about us. And not about the disadvantaged, the disenfranchised, the illiterate, the beaten, the abused, the neglected, the targeted, the traumatised, the addicted, the mentally unwell. The vulnerable.

Many of us here came to the law because we wanted to be Atticus Finch-didn't we? To fight injustices, racial or otherwise. And although many of us in this room may not have any lived experience of what it is to walk in the shoes of the disadvantaged, we certainly want to fight for their rights. We certainly want to fight for their voice to be heard. And the practise of pratyahara- the shedding of the ego, provides us with the sharpest tool to do so.

The **mind** undistracted by the ego is laser sharp.

Only then does the mind have the ability to search for the true heart of the case in front of us. And once we've found the heart of the case, we are ready to build our defence case.

THE SIXTH LIMB OF THE PRACTISE OF YOGA IS DHARANA

The Sap

The sap carries the energy and links the whole tree as one. Dharana is the practise of intense concentration, focus and discipline. For the yogi, it is the bringing together of the 3rd, 4th and 5th limbs of the practise of Yoga. Of course, intense concentration is no stranger to the Advocate. It's what we lawyers generally excel at. No advocate, has ever reached success for their client without hours of intense focus, hours of hard work. There are generally no short cuts when you bear the responsibility off another person's liberty in your hands.

But what the advocate can learn from the yogi is *how* to do justice to your client while simultaneously doing justice to yourself by keeping a healthy mind, body and spirit.

THE SEVENTH LIMB OF THE PRACTISE OF YOGA IS DHYANA

The Flower

Dhyana is the state of being absolutely present but without any effort. Almost as if you are so present you manifest perfection in what you are doing. It is known to many yogis as the *flow state*.

In Advocacy, it's those rare occasions when you feel *totally in the zone*. Those occasions when everything comes together, perfectly. Your killer cross examination appears seamless; the judge is furiously in agreement with every submission you make; you have convinced yourself that the jury is hanging off your every word; even the Crown looks like they've come on board! When you reflect on those moments in your professional life, when you really feel like you were in the zone, ask yourself why? What happened on that day or days, that was different to other days? Perhaps your reflections will lead you to find that on the days when you were in the zone, your physical body felt strong and well rested, your breath was calm, your nerves were in check, your ego was sidelined, and as a result, your mind was razor sharp.

Perhaps, your inner yogi, was on display.

THE EIGHT LIMB OF THE PRACTISE OF YOGA IS SAMADHI

The Fruit

The *essence* of a tree. Samadhi means "to bring together to merge." A state of joy and peace. A state of oneness. **Harmony** with oneself and others.

Ultimately as Advocates this is where our success will lie. This is what we should seek to achieve. For ourselves.

And the positive effect it will have on our advocacy for our client.

YOGIC LEARNINGS

The road ahead for criminal lawyers is unlikely to be an easy one. Unlike the Dutch, we build more goals rather than shut them down. The demands on us are only likely to increase, not decrease. We are already being paralysed with information overload. Endless emails. Briefs of evidence that span thousands of pages. Never ending judgements that we need to read that are no longer limited to a few paragraphs or pages like the old House of Lords decisions were.

The injustices being perpetuated are not diminishing. We deny a voice to the very people on whose land we walk. How do our souls recover from that? And to add salt to the wound, the very organisations best equipped to represent the disadvantaged and give them a voice are constantly under threat. Restorative justice is the exception rather than the rule.

If we don't find harmony within ourselves, find balance in mind and body, we will likely compromise our ability to advocate on behalf of our clients and we will fail in our efforts to facilitate the course of justice.

Perhaps following any one, or all eight limbs of a yogi's practise, is one tool we can utilise to combat the demanding journey ahead for us all as criminal law advocates.

Om Shanti

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