

PERSPECTIVE

The Mindful Lawyer: Not Your Usual Law Conference

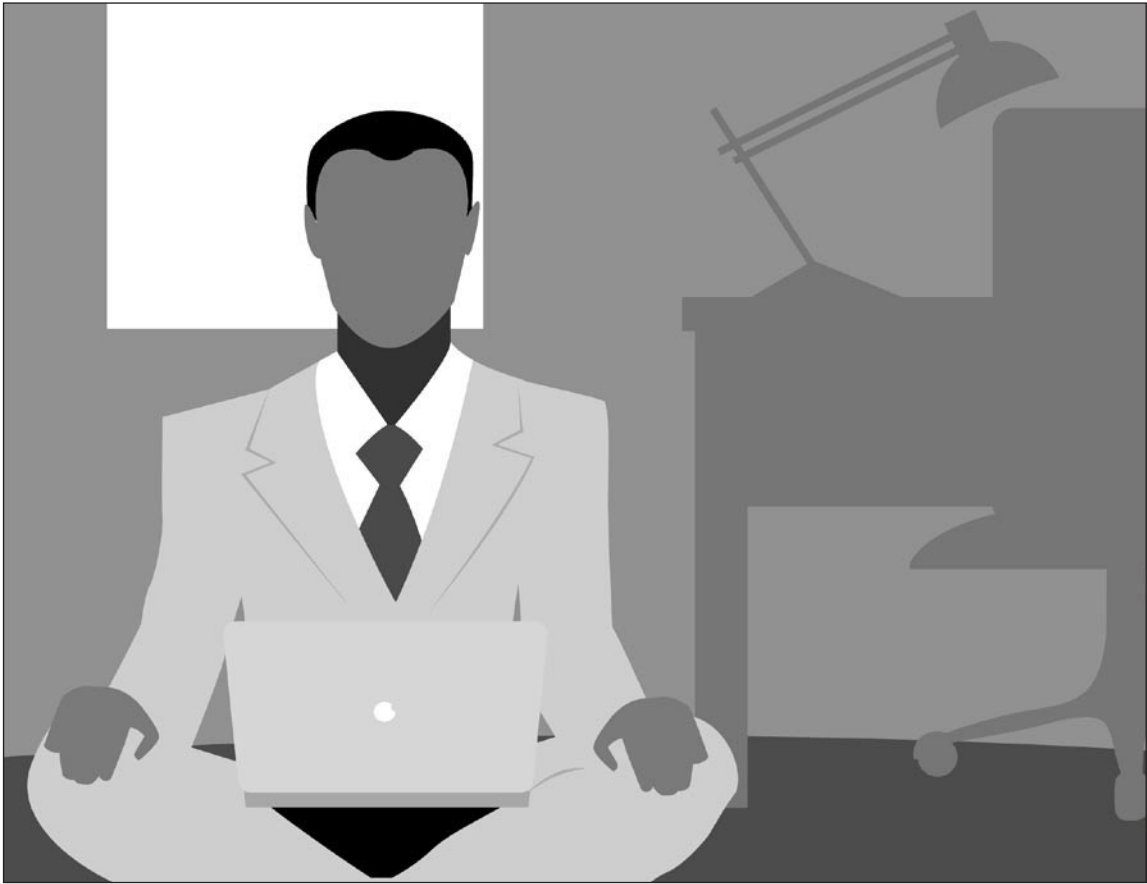
By Timothy Tosta

At the end of October, I attended a two and a half day program hosted by UC Berkeley School of Law. It was sponsored by a number of entities including the law schools at the University of Buffalo, City University of New York, University of Florida and University of San Francisco. There were participating law professors from UC Berkeley, Hastings College of the Law, University of Florida, Temple University, University of Denver, Creighton University, Seton Hall, University of Missouri, and Vanderbilt. Over 175 participants were drawn to the conference from the ranks of private law firms, large and small, in-house counsel, public interest firms, mediators, public agency lawyers, district attorneys, and law students. Participants also included a former chief justice of the Utah Supreme Court, a U.S. District Court judge, a justice from the Arizona Court of Appeals and senior staff from the U.S. District Court, Northern California District.

Themes at the conference included improving professional skills, enhancing client services, building diversity, reducing stress, creating a deeper commitment to ethical practice, and enhancing attorney satisfaction and happiness. We were joined by clinical psychologist Philippe Golden of Stanford University and Shawna Shapiro, professor of counseling psychology at Santa Clara University.

And, if the title didn't already give it away, conference faculty included Norman Fischer, Zen priest, former abbot of the San Francisco Zen Center, poet and author of "Sailing Home: Using the Wisdom of Homer's Odyssey to Navigate Life's Perils and Pitfalls," and Jack Kornfield, co-founder of Spirit Rock Meditation Center in Woodacre, and author of numerous books including "A Path with Heart" and "After Ecstasy, the Laundry."

What drew this extraordinary and eclectic group of legal minds together was the desire to meet with other legal professionals from throughout the United States, all of whom engaged in meditation or other contemplative practices and to learn from one another about how our respective contemplative practices affected our legal careers and lives. For almost a decade, a small group of legal professionals has been meeting annually in California for a five day meditative retreat. Other retreats have been held in the East. Under the leadership of Charles Halpern, a pioneer in the public interest law movement and an innovator in professional education, and now Scholar-in-Residence at UC Berkeley School of Law, a national audience was convened to share experiences, to create a broader community of interest and to advance to the broader legal community the benefits that we all had



experienced through our respective practices.

Although most meditative and contemplative practices have their roots in religious and spiritual domains, these practices can be, and most frequently are, entirely secular. Buddhism, which generally is considered in the east to be a form of religion, is most often considered in the west to be psychology. Meditators frequently retain the religious orientation of their upbringing from Judaism to Catholicism to agnosticism.

What meditators have to share, irrespective of their spiritual orientation, is a desire to quiet the mind to gain greater capacity for insight. The Bay Area Working Group on Law and Meditation, a small group of practicing lawyers, judges, legal educators and mediators, has been meeting monthly for over seven years with Norman Fischer to explore how meditation has impacted their lives and the profession. Their work has spurred discussions at the annual California meditation retreats, sponsored by Spirit Rock Meditation Center and the Center for Contemplative Minds in Society.

As part of the conference materials, the Working Group issued its paper on the "Meditative Perspective" that has been evolving over the recent course of years. Their findings best articulate the experiences of those attending the conference. The Working Group maintains that meditation fosters "a more profound relationship with our thoughts, emotions and, ultimately, ourselves." This relationship gives rise to "more choice and flexibility in thinking and feeling, as well as an increased capacity to embrace paradox and opposing view points." It's an outlook that develops through meditative practices, and leads to "enhanced appreciation and understanding of the impact of our actions in the world." The meditative perspective, according to the Working Group, allows for attorneys to open themselves to "new approaches and strategies, helping us to solve problems and accomplish judgments more effectively." Moreover, it allows "greater competence and clarity in our commitment to an ethical path." It permits "clear and focused presence which enhances effectiveness, promotes stability and calmness." The meditative perspective reduces reactivity to challenging situations, "allowing one to view problems as challenges to be solved, transforming anger and self righteousness into creative energies to serve the needs of our clients." Finally, the perspective "heightens our sensitivity to suffering, allowing us to better apprehend difficult situations and handle them with their greater sense of ease."

Golden presented a cutting edge research, confirming what neuroscientists are learning about the benefits of contemplative practices. Shapiro spoke to how mindfulness practices enable the cultivation of greater personal happiness, health and freedom. Panelists discussed examples from other professions, such as medicine, social work and higher education as to how contemplative practices were being incorporated in those fields to allow for greater professionalism, for stress reduction, and

greater levels of professional satisfaction.

A panel of judges spoke to their experiences on bringing a meditative perspective to the bench, reflecting on how it has transformed their work as judges and altered the processes of the courtroom. Another panel of mediators discussed how mindfulness has affected their approach to mediation. Yet another panel of practicing lawyers spoke on how a mindful lawyer's practice looks from the inside out, while a student panel spoke to how meditation has affected their law school experiences.

All in all, it was far from your usual law conference. It was an affirmation that there is a greater contemplative community seeking to improve our relationship with the profession by finding support through meditation and being willing to support one another in the endeavor.

I was heartened by the number of people who have had experiences similar to mine in which they have felt reduced stress, greater creativity and more positive outcomes by operating through a meditative perspective, not only in their career but also throughout their lives. I wanted to make you aware of this conference because of the great hope it offers our profession, not because there are a growing number of meditators engaged in the practice of law, but for the fact that there are so many extraordinary talented individuals in the practice of law who are seeking to make it more creative, more wise, more ethical and more effective.

If you have interest in this conference, and future opportunities to become involved in the community, I direct your attention to www.mindfullawyerconference.org.

Letter to the Editor

Asset Planners Should Take Heed

In his article "The Emotional Consequences of Asset Protection," published in the Nov. 24 edition of the *Daily Journal*, Jacob Stein posed the presumably rhetorical question "Does Richard [the client] go to jail, face civil penalties, be subject to a caning?" with regard to "asset planning" in light of an expected claim of approximately \$10 million under a personal guaranty of a failed real estate investment. The non-rhetorical answer is "no" to the caning, but quite possibly "yes" to jail and civil penalties. A transfer made with the intent to hinder, delay or defraud creditors is a crime, albeit a misdemeanor. (Penal Code Section 531.) Further, if a client with such an intent seeks an attorney's advice to "protect" the client's assets, the crime-fraud exception will negate the attorney-client communication privilege. (Evidence Code Section 956.) Hopefully, the author and other "asset planners" advise their clients about these risks before they give advice about "protecting" assets. Further, they should consider the risk to their own careers, law and

other licenses, and personal liability before they give any such advice. (*Coppock v. State Bar of California* (1988) 44 Cal.3d 665, 679 (attorney disciplined for assisting client in hiding exempt funds, as the act of concealing the funds "amounts to an admitted intent to deceive."); *Allen v. State Bar of California* (1977) 20 Cal.3d 172, 178 (pursuing and participating in a scheme to transfer client's real property for purposes of defrauding creditors, among other things, were grounds for disbarment); *Townsend v. State Bar of California* (1948) 32 Cal.2d 592, 597-98 (upholding the recommendation that an attorney be suspended for three years for knowingly advising his client to make a conveyance of real property owned by the client for the purpose of delaying and defrauding the client's creditors).)

Attorneys should, and indeed, must, remember the limits on the legality — and the morality — of "helping" clients, even ones on an "emotional rollercoaster."

Henry S. David
Snell & Wilmer, Los Angeles



Timothy Tosta is a partner with Luce Forward's San Francisco office, specializing in land use law. He blogs at www.coachingcounsel.com/blog. He can be contacted at (415) 356-4612 or ttosta@luce.com.

SUBMIT A COLUMN

The *Daily Journal* accepts opinion pieces, practice pieces, book reviews and excerpts and personal essays. These articles typically should run about 1,000 words but can run longer if the content warrants it. For guidelines, e-mail legal editor Sharon Liang at sharon_liang@dailyjournal.com.

WRITE TO US

The *Daily Journal* welcomes your feedback on news articles, commentaries and other issues. Please submit letters to the editor by e-mail to sharon_liang@dailyjournal.com. Letters should be no more than 500 words and, if referencing a particular article, should include the date of the article and its headline.

OFFICE SPACE FOR RENT

\$19/inch
daily rate
20-day ad

\$22/inch
daily rate
10-day ad

in print in the
San Francisco

Daily Journal

and online at

www.dailyjournal.com

classifieds@dailyjournal.com • 800.487.8262

