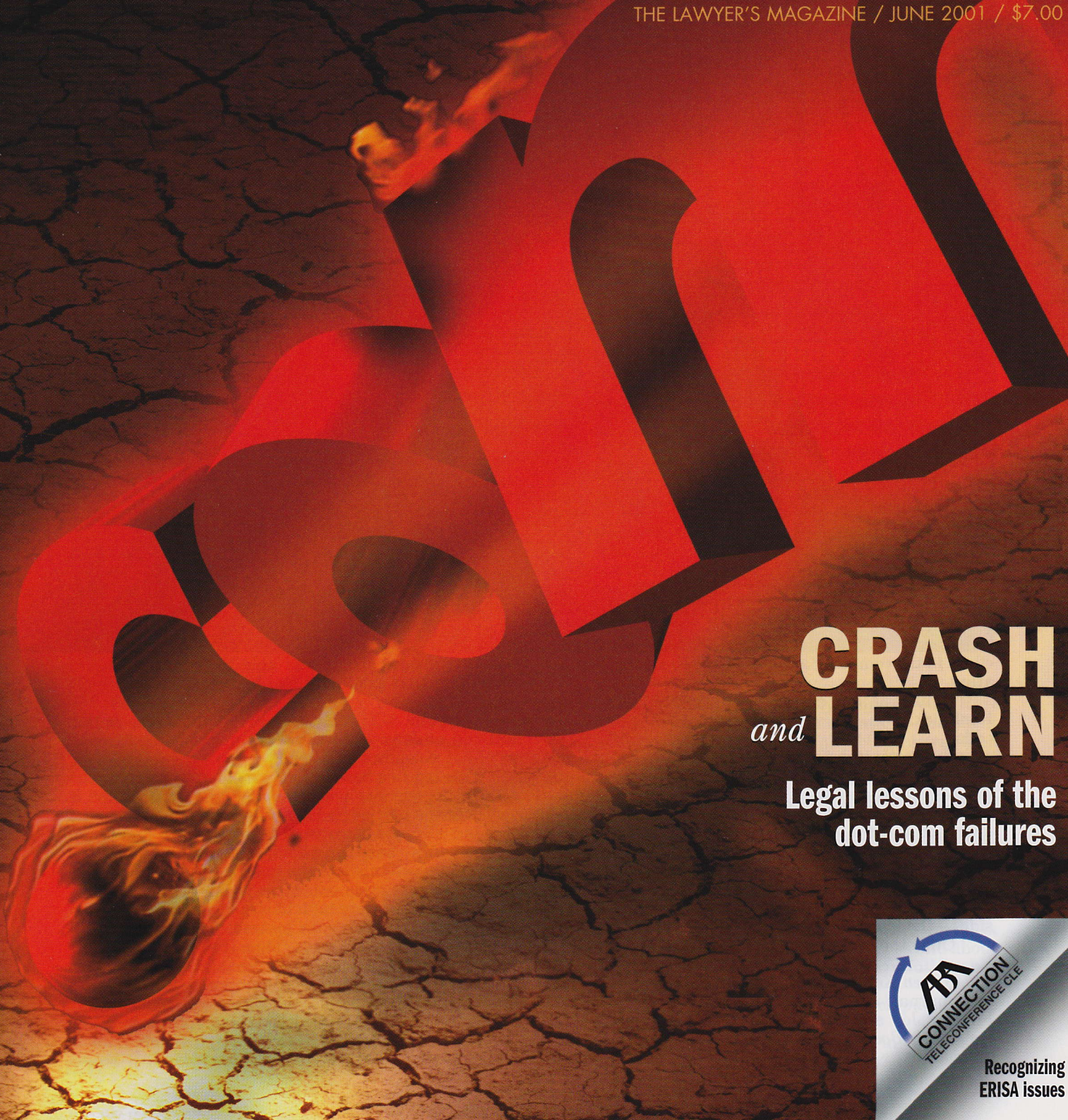


WHAT CLIENTS WANT

COURT WITHOUT CLOUT


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CRASH *and* LEARN

Legal lessons of the
dot-com failures



Recognizing
ERISA issues

BY STEVEN KEEVA

When lawyer Larry Kushnick showed up with his client for a federal mediation in Manhattan last November, his expectations were lower than low.

"I'd had mediations before with ex-judges, and I thought it would be like that," says Kushnick of Melville, N.Y. "I was expecting a federal court mediator in his 60s or 70s, and I thought it would be formulaic: 'What's the bottom line? Can't do it. OK, I've got a 2

What Clients Want

p.m. mediation, gotta go.'"

He was caught off guard when Arnie Herz walked in. "Nobody knew this guy, and he was certainly younger than I was expecting," Kushnick says.

There was, by all accounts, an extraordinary amount of bad blood between the parties, who had come to discuss their "cyber-squatting" case. They'd already had a contentious history when one of them—the defendant—used the company name of Kushnick's client in the computer address of a Web site he was creating.

"This was not a case that was going to settle," Kushnick says. "It was way more than against the odds."

But settle it did, and in a way that, to use the vernacular, blew away both Kushnick and Celeste Butera, the defendant's lawyer.

"What I thought was most unique about Arnie's approach was that he truly used his perceptions about human nature to break down everybody's walls and the barriers that separated the two clients," says Butera. "If I could I'd use him again because I thought he was really phenomenal and truly listened to both sides—the lawyers and the parties."

Once the walls had fallen and the emotional in-

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People who come to Arnie Herz seeking legal help leave with some unexpected solutions.

tensity subsided, Herz was able to point out something that gradually had become clear to him.

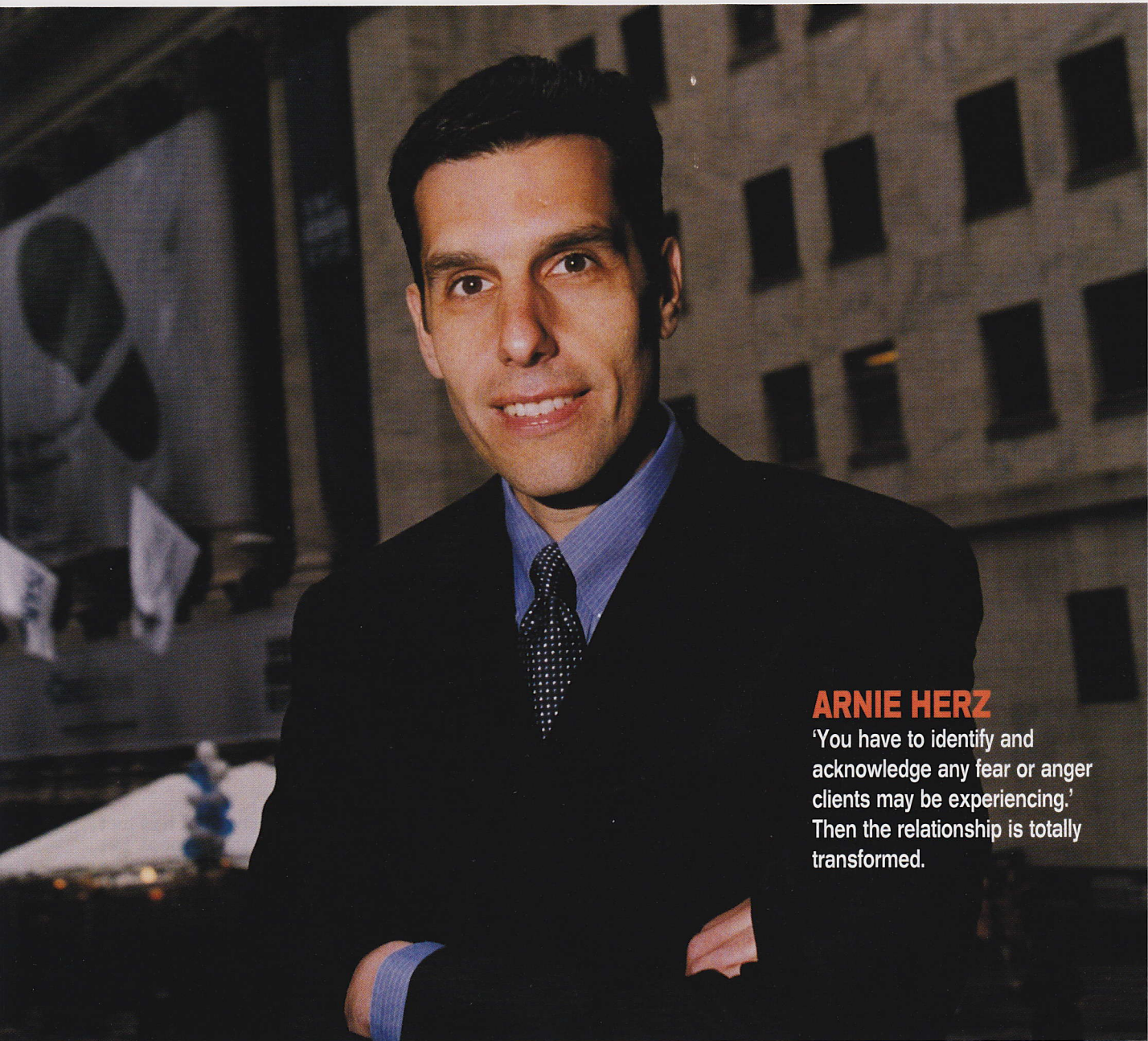
"Arnie said, 'If you guys can somehow resolve this suit and sit down and work it out, you're going to make money,'" Kushnick recalls.

This led to a result that, considering the way the session began, was truly astonishing. By the time it was over the parties had not only agreed to resolve the case but also had discovered that they each had something to offer the other. One had a product to sell; the other had a conduit into the market to sell it.

"Once that came out, there was no problem," says Kushnick. "They were both businessmen and once they realized an economic gain instead of a drain, they finally uncrossed their arms. Then it was just a matter of working out the dollars and cents."

Kushnick was sufficiently impressed with Herz's mediation skills that he decided to stay in touch. "I like his approach and I think I could learn from him," he says. "Lawyers aren't trained in this; it's more holistic and empathetic. I think highly of his ideas."





ARNIE HERZ

'You have to identify and acknowledge any fear or anger clients may be experiencing.' Then the relationship is totally transformed.

But this success story has a punchline. Unbeknownst to both Kushnick and Butera, Herz had only recently been appointed to the panel of federal mediators. It was his first mediation.

A Path Less Traveled

The lawyers who worked with Herz in the cyber-squatting mediation are hardly alone in their assessment of his abilities. In fact, a growing number of clients with diverse legal and personal needs describe similarly impressive experiences with this Wall Street solo practitioner.

His approach is based on certain premises that in most cases aren't taught to law students, nor to those young lawyers who are lucky enough to have mentors. Chief among them: Every legal situation holds the seeds of transformation, once the larger business and life goals are understood.

"If you can discover what your clients really want—and it is rarely what they initially say they want—

then, as a lawyer, you are really empowered," Herz says. "We're trained to size up a situation—the client has X problem or Y problem. We pin things down, then move through the process with blinders on. But life's not like that; human beings are constantly changing, evolving. Growth is inherent, and lawyers need to respect that."

A case in point: Macie Scherick. When she hired Herz two years ago, all she needed was for him to draft documents so she could sell her 50 percent share of a SoHo art gallery. At least, that's all she *said* she needed. Indeed, it's all she *thought* she needed.

But Herz sensed there might be more to think about. He asked Scherick about the business and about her partner of 15 years, and he listened carefully to her answers.

The result? Well, here's how Scherick puts it: "He profoundly transformed my life."

Lawyers help people all the time, in ways large and small. But transforming their lives? Scherick in-

ARNIE HERZ and MACIE SCHERICK

Selling her share of an art gallery was what Scherick thought she had to do; Herz helped her achieve what she really wanted.



sists it's true. "Before I worked with him I had lots of fears, but that's all gone now," she says. "I was stuck, and he helped me travel the road I needed to go down."

Centered in the Law

Arnie Herz has a disarming presence. At 39, he is significantly older than people usually take him to be, with strikingly high cheekbones, a prominent nose and deep-set, dark eyes. When he speaks, his words seem to rise up from a well of possibilities, lending a sense of great clarity and depth to his view of life and the role a lawyer can play in it.

It took a circuitous journey and a lot of personal evolution to bring Herz to the insights that serve him so well in his work. He grew up in suburban Long Island, N.Y., in a family thick with lawyers and lawyers-to-be. His three siblings and his father—whose integrity and gift for living has always inspired Herz—are all lawyers. Herz and his brother are both married to lawyers. His uncle and five first cousins are lawyers. And there are others.

Although he always assumed he'd go into law, too, he didn't follow the conventional path. Instead of going straight from college to law school, he traveled in Europe for a while, then spent two years in India studying yoga and meditation.

"I went to India to get a deeper understanding of things," he recalls, "so that I wouldn't go to law school for the wrong reasons." By the time he decided to attend Fordham University School of Law, he knew exactly why he wanted to go. "After experiencing this incredible inner state, and the whole concept of dharma—which has to do with justice and duty—I was able to

see law school as a vehicle for helping people. I had met so many people over the years who had the need but distrusted their lawyers, that I thought wouldn't it be great to help them?"

In law school he was often told he was too relaxed. "I didn't work like a maniac. I led a balanced life," he says. As hard as it is to do that in law school, it was a greater challenge where Herz went next: the large New York City law firm of Weil Gotshal & Manges, where he became a litigation associate. True to form, he took something different from the experience than most big-firm associates do.

"I loved my time there," he recalls. "I was able to create what I wanted: a truly meaningful and balanced work environment. I wasn't on the partnership track—I never wanted to be—and I took full advantage of the room that gave me to move. I did a lot of pro bono work, which allowed me to develop my legal judgment, and to get what I wanted most—direct contact with clients."

After 2½ years at Weil Gotshal, he moved to a Madison Avenue litigation boutique, where he quickly began developing clients beyond his litigation practice. That led him to a partnership in a young Wall Street practice, then finally into solo work, which, he says, gives him maximum flexibility for developing the type of practice he wants.

For a while now he has bucked the trend toward specialization by developing expertise in areas such as intellectual property, Internet law, corporate law, litigation and alternative dispute resolution.

Today his clients include a wide variety of businesses, corporations, Internet and other high-tech companies, and even a successful actress. Phylicia Rashad,

late of *The Cosby Show*, was sufficiently impressed with him as a person that she hired him (and continues to use him) despite his previous lack of experience in entertainment law.

The truth is that Herz has developed a way of practicing law that consistently sparks revolutionary results for clients—and could well do the same for other lawyers who aspire to something more meaningful in their work. Consider how he worked with gallery owner Scherick to transform her life.

But first, another cornerstone of his approach to law practice. Whether clients come to discuss a business dispute, a will or a contract, they almost invariably bring confusion, fear and anger, Herz says. “The problem,” he adds, “is that when they come in such a condition, they are apt to accept legal solutions that don’t serve them as well as they might.”

That’s exactly what Scherick was ready to do. But as she talked about selling her stake in the gallery, Herz didn’t hear a woman who wanted out. He heard a woman who loved her work but had been intimidated by her business partner. At the time, Scherick had a 2-year-old child, plus another on the way. Her partner was insisting that the demands of motherhood were inhibiting the gallery’s success and, therefore, her own. Scherick said she was willing to step aside.

But Herz heard between the lines. “For Macie, what first appeared to be a simple legal transaction powered by a solid business rationale turned out to be a complex situation involving two disempowered people,” says Herz. “She lacked self-esteem, was fearful of confrontation, intimidated by her partner’s emotions and aggressiveness, and not aware of her legal rights. So she was brought to the brink of selling a business she loved, was good at, and that was rightfully hers.”

When Herz explained to Scherick that she was legally entitled to stay in the business, and that her partner could not force dissolution or push her out, she didn’t believe it. “But then she began to see that she was not powerless,” says Herz. “In fact, it became clear to her that, with all the legal leverage she had, she held the power and not her partner.”

This gets at another premise that underlies Herz’s work. “You have to identify and acknowledge any fear and/or anger or confusion that clients may be experiencing. When you do that, the relationship is totally transformed. They then know what it means to be heard, because you’re seeing their true interests—which they rarely know they have—rather than a mixture of emotions that sets them off balance. With Macie, I had to lead her through the fear and give her some place to stand.”

When he did that, says Scherick, “I never felt so understood in my life.” Realizing that she had let herself be taken advantage of, she began to express her anger about the situation. Because Herz had helped her reclaim her own sense of self-worth, she realized she wanted more of a fair shake than she had sought.

Then Herz asked her to do what he asks all his clients to do. “I ask them to step outside the legal situation, to forget about all the drama of the moment and instead think about what they’d like their lives to look like three or four months down the line. Suddenly they see possibilities that never would have occurred to them before.”

Once the shift occurred in her understanding of what brought her to Herz in the first place, Scherick al-

When clients talk about Arnie Herz, they often sound like enthusiastic reviewers, writing blurbs for book jackets. Some of the blurbs on Herz’s jacket:

“He truly focused on who I am. By homing into that, he was then able to connect it back to my value from the business standpoint. His take on how to proceed as far as the negotiation was just dead-on.” –Lynn Picard, executive vice president of sales, Lifetime Entertainment, for whom Herz negotiated a new employment agreement

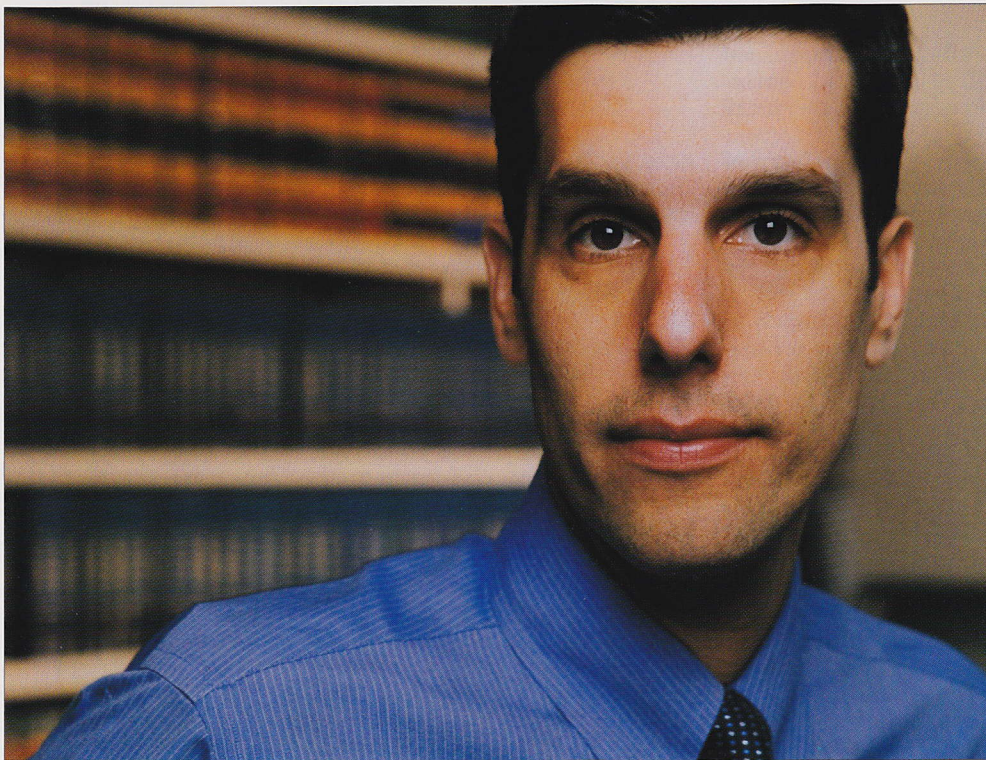
“He’s the first attorney I’ve met who is sensitive to the work I do. His style reminds me of my own style, that of an alchemist working with what I have to work with to create what needs to be done. With Arnie, it’s not like the problem is the focus; it’s really just the door we’re walking through. I look forward to my meetings with him, and I could never say that about an attorney before.” –David Raney, designer and Feng Shui master whose clients include Donna Karan, Hugo Boss and Broadway star Betty Buckley

“Although he doesn’t look it, he’s very tough. I’ve dealt with lots and lots of lawyers, both here and in law firms all over the world. I’ve never been more satisfied with a lawyer than I am with Arnie.” –Marilyn Goldberg, president, Museum Masters International

“Arnie helped me see that I couldn’t have everything: it was either going to be the money or my freedom. He helped me go down the freedom path, leaving no stone unturned to get me where I am today. He’s a tough negotiator who I’d put up against anyone, and he can be a bit cocky now and then. But, with all due respect, I think he should have charged more. After all, what do you pay someone who gave you your life back?” –Mark Adams, president, Terra Comm Group, whom Herz represented in a lawsuit against a company for breach of contract

“I was having a very difficult time dealing with someone in negotiations for the rights to a book. I would become so furious with him that we weren’t getting anywhere. Arnie told me that the anger had nothing to do with the rights, that it was rooted someplace else. He told me to meditate on why it was surfacing.

“It turned out that it went back to my youth. By fighting with this man, who was actually trying to help me, I was fighting back at someone who abused me when I was 10. As soon as I got that, I let go of all the anger and this man and I become friends, which we still are. I’ve learned things from this experience that will matter in all my relationships.” – Andrea Adler, producer



With clients, 'I ask them to think about what they'd like their lives to look like' in three or four months.

lowed him to negotiate a fair deal for her. The result was that the partner left the business to start her own.

Scherick, along with a new partner, continues to run the business, which has grown substantially in both revenues and square footage. Their Sears Peyton Gallery is about to double its space in a move to Chelsea, the very epicenter of the New York art world.

Preparing for the Day

Herz arrives at his law office in Manhattan every morning after a 45 minute ride on the Long Island Rail Road. He spends most of the time on the crowded train in meditation and contemplation, his eyes either closed or looking out the window in a soft-focus gaze at the passing scenery. It helps him get centered and sharpen his awareness for the rest of the day.

Some time around 8:30 a.m. you're likely to see him—tall, slender, clad in dark colors—coming up from the Wall Street subway station. To his left is the New York Stock Exchange, to the right is his building, 40 Wall St.

And straight ahead is the sight that adds a certain perspective on this no-time-but-now beehive of capitalism: Trinity Church. Founded in 1705, it is still standing, still hosting in its graveyard the remains of such notables as Alexander Hamilton and steamboat inventor Robert Fulton. Herz finds the contrast comforting.

Although Wall Street is hardly the first place that springs to mind as a hub of transformative lawyering, Herz's office belies that, speaking volumes about who he is and what matters most to him. Nothing is haphazard. He works hard to keep it clean and orderly, and sees it as a sacred space within which life-changing moments can unfold. Its stark simplicity contrasts

perfectly with what is visible outside: the chaos of lower Manhattan and the harbor beyond.

Each piece of artwork has meaning. An oil painting called "Golden Glow of a New Day" shows the sun and sky and conveys the possibility of new beginnings. And there's a photograph—one of the most famous sports images of all time—showing Muhammed Ali with his fist in the air, a battered Sonny Liston at his feet. It was a gift to Herz from the photographer, the great Neil Leifer, who was once a client.

Scrawled across its surface are the words, "Like Ali, one day people will be calling you 'The Greatest.'" But that's not why it's on the wall. It's the story behind the photo that's meaningful.

Leifer, who was a neophyte when he took the famous shot, had been exiled to the "wrong" side of the arena that night, to a poor vantage point that the vet-

erans shunned.

"That's how life is," Herz says of the iconic photo. "We tend to think that there's a right place and a wrong place to be, but in fact everything is potentially the right place if you're prepared to take advantage of the moment."

One of the more unusual and unusually effective things about Herz is his steadfast refusal to let clients' initial emotional reactions set the tone for his representation. "As soon as a lawyer allows himself to be dragged into the client's shortsighted, reactive demands, the opportunity to bring about a truly constructive result is lost," he says.

He is remarkably skilled at helping clients get past their fear and the other emotions that distort their sense of what they really need. He can do this, he says, because he is ceaselessly engaged in the process of understanding his own mindsets and motivations. The process benefits both his clients and himself.

And for him, Herz is quick to point out, the benefits are not only professional, spiritual and emotional. They are also financial. "It's important to note that practicing this way does not mean poverty for lawyers," he says. "If you're really helping people and giving them significant value added, you can make quite a good living. I do."

Herz's work, coupled with his daily meditation, has given rise to a deep sense of gratitude for what he sees as a gift: the ability to feel his way into a law practice that suits him perfectly and makes gratifying, enlivening surprises an everyday reality.

Occasionally, a look of amazement flashes across his face, a look that says, "Isn't it all so wonderful? So obvious? So *doable*?" ■