

# The Boston Globe Magazine

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# The New (Kinder, Gentler) Lawyer

A holistic makeover for  
an unhappy profession.

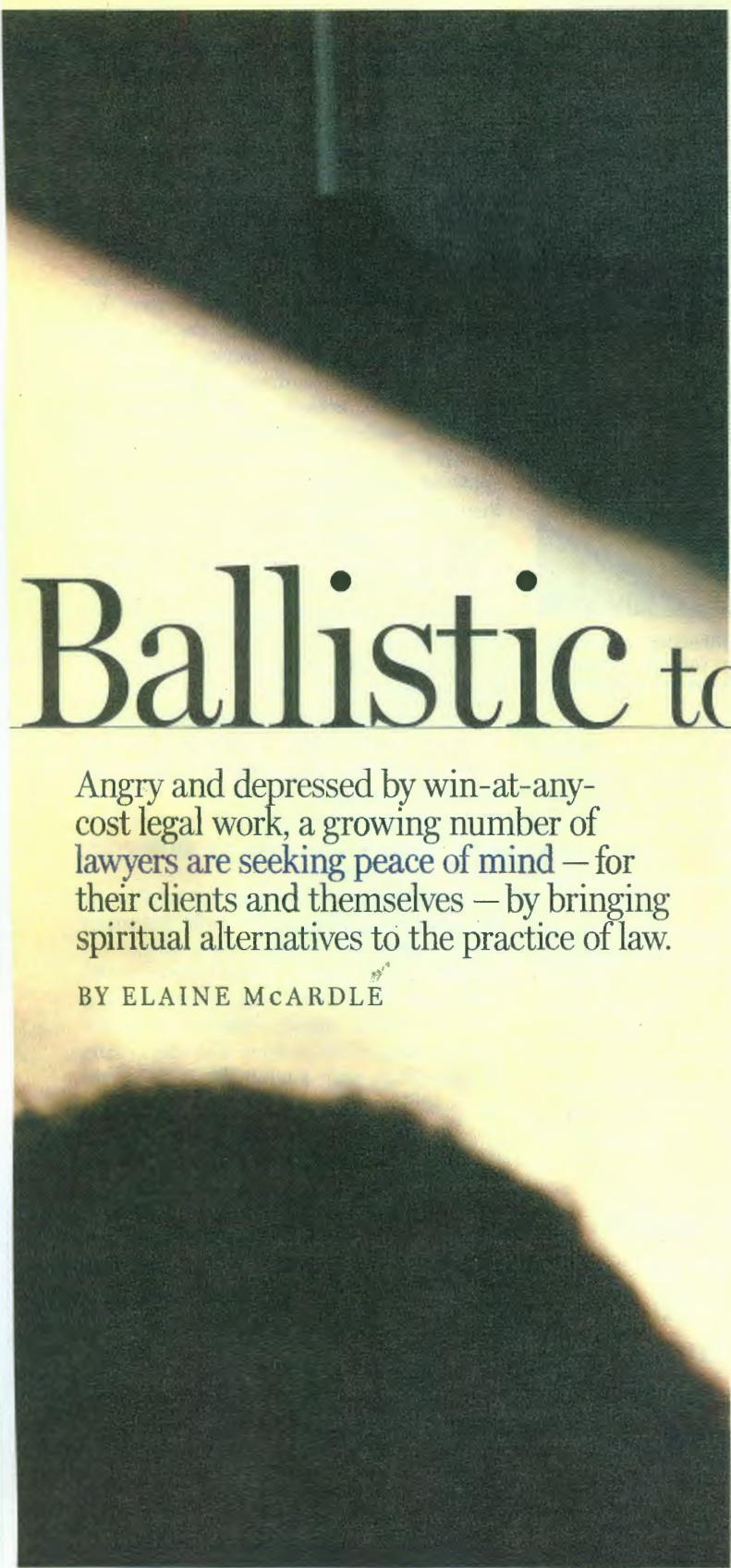
BY ELAINE McARDLE



Boston attorney  
**Justin Morreale**,  
who teaches a  
weekly yoga  
class at Bingham  
McCutchen, the  
city's largest law firm.



From



When Rita Pollak became a lawyer 23 years ago, she envisioned herself in a noble profession that would improve people's lives. Instead, she discovered that the legal system brutalized everyone it touched: clients, judges, lawyers. Law practice wasn't about seeking justice or finding reasonable resolutions to conflict. It was lawyers focusing on destroying their opponents by any means possible: nasty fights, vicious accusations, twisting the truth.

In this "win-lose" model, no one was really winning. Divorce litigation drove families further apart and ran up astronomical legal bills. Juvenile court was a scene from Dickens: children crying, teenagers chained together, attorneys huddled in corners trying to speak to their clients, judges with groaning caseloads, and no time for careful decisions. "It was really a painful place to be," says Pollak, who practiced in Greater Boston. "You're in a bickering, competitive model. What could be worse for families and children? And, ultimately, for judges and attorneys?"

# Ballistic to Holistic

Angry and depressed by win-at-any-cost legal work, a growing number of lawyers are seeking peace of mind — for their clients and themselves — by bringing spiritual alternatives to the practice of law.

BY ELAINE McARDLE

Pollak's work literally made her sick. Every time she was due for court, she would vomit and have diarrhea. "I chose this profession because I wanted to be of service to people and to our greater society," she recalls, "but I didn't feel the system I found myself in encouraged that. The whole environment was very toxic."

Like a growing number of lawyers, Pollak decided to quit; she had the vague idea of working as a florist. "I had to do something beautiful. I didn't care what it was, but it had to be visually and holistically healing."

David Hoffman knows the feeling. A child of the 1960s, he graduated from Harvard Law School in 1984 and selected a venerable Boston firm, the now-defunct Hill & Barlow LLP, which supported his desire to practice in a socially conscious manner. Despite his best efforts, he found that very difficult to do.

One of his first cases involved a roof that collapsed in a commercial building. It would cost \$300,000 to fix, and Hoffman's client, who owned the building, was willing to pay \$100,000 toward repair. The roof manufacturer offered a matching amount. That left a \$100,000 gap. But instead of working out their differences, the two sides battled in court for nine years, spending a combined \$600,000 on legal fees — six times the amount in contention. Although he'd performed his job exactly as he'd been taught, Hoffman felt frustrated

Rita Pollak became a lawyer, she says, "because I wanted to be of service to people and society, but I didn't feel the system encouraged that. The whole environment was very toxic."

and unhappy. "It wasn't consistent with my approach to life and to problems in general," says Hoffman, who lives with his family in cooperative housing in Acton. When a friend commented that his was "a hurting, not a helping, profession," he started thinking, he says, that "there had to be a better way."

Israella Brill-Cass had high hopes when she graduated from law school in 1993 and began work as a trial lawyer in Rhode Island. She chose litigation, she says, because "there's an attitude that if you don't litigate, you aren't a real lawyer." But she quickly came to see litigation as an industry that served lawyers and court employees at the expense of clients. "Even when I did get clients what they wanted," she says, "at the end they'd say, 'I hate my ex, I hate the judge, I hate you - goodbye!'"

In one case, Brill-Cass represented an elderly man trying to protect the assets of his nieces and nephews after his sister, their mother, died. The sister had cut her estranged husband from her will, but he was raiding the estate of money meant for the children. The judge on the case was a state trooper who held "court" once a month in a library, and he refused to stop the bleeding of the estate. Finally, the case made it to the Rhode Island Supreme Court, where Brill-Cass prevailed. But her client had died in the meantime, and his wife was thoroughly disgusted with the legal system.

"I won, but he didn't benefit," says Brill-Cass. "There was no joy. So I left the profession."

SCRATCH THE AVERAGE LAWYER DEEP enough, and you'll find someone who hates what he does.

Only 27 percent of lawyers polled by the American Bar Association in 2000 reported being "very satisfied" with their professional lives. The remaining 73 percent described themselves as "somewhat satisfied," at best, or "very dissatisfied," at worst. Indeed, lawyers have the highest rate of depression among 105 professions, according to a Johns Hopkins University study. At least 70 percent of lawyers surveyed would start a new career if they could, and more than half would not recommend a legal career to their children, according to *California Lawyer* magazine. It is estimated that tens of thousands flee the profession each year.

For two decades, bar associations nationwide have puzzled over this epidemic of professional dissatisfaction. They've focused on

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*Elaine McArdle, a freelance writer in Belmont, is a graduate of Vanderbilt University Law School and a former editor at Lawyers Weekly USA.*



Cheryl Conner meditates at Northeastern University's Sacred Space. She says lawyers yearn "to express passion and compassion and intuition and wisdom."

too many hours spent at work, increased competition for clients, shrinking revenues. But long hours and lower-than-expected paychecks didn't really explain it; after all, some of the most satisfied practitioners - public interest lawyers, for example - work the hardest but earn the least.

It turns out that the biggest factor in this professional malaise is intangible: the value and meaning of the work. Lawyers are unhappy because they don't feel like they're making the world a better place. According to the American Bar Association poll, 84 percent of lawyers said their expectations of improving society were not fully met. "The inability to make a contribution to social good is the aspect of

Boston has emerged as a leader of the **progressive law movement**, which seeks to make human and spiritual values an essential part of law practice. As such, every lawyer would ask: **What is the societal value of my work?**

practice that seems to disappoint young lawyers the most," the report found.

Where do they lose their way?

Blame the litigation machine, for starters. Although mediation and other alternatives for resolving disputes have gained a foothold in recent years, litigation's slash-and-burn model still dominates the legal world. Yet many lawyers (not to mention clients) feel frustrated by this emotionally and financially costly approach. Litigation's ruinous wake feels especially unsettling in cases where parties will have an ongoing relationship - divorces involving children or disputes between business partners. But because lawyers tend to bill by the hour, they have an incentive to keep litigation going.

Then there's the dominant pedagogy in legal education, known as legal formalism, in which law students are trained to ignore messy concepts like justice or morality in favor of applying strict rules and doctrines. Even though lawyers deal with people in serious distress, they get no training or support for integrating emotional intelligence or human values into their practice. Clients begin to look like walking legal problems instead of complex human beings.

"Lawyers are in situations that call for a human response, but they're required, instead, to give a technical response," says Dr. Richard Wolman, on the faculty at Harvard Medical School and author of *Thinking With Your Soul: Spiritual Intelligence and Why It Matters*. "That disconnect between being a human being and a technician causes pain and drives people out of the profession."

True, lawyers do learn rules of legal ethics, but these rules often conflict with commonly held concepts of morality, truth-telling, and decency. Legal ethicist Richard Zitrin, in his 1999 book, *The Moral Compass of the American Lawyer: Truth, Justice, Power, and Greed*, relates a story of two lawyers who obeyed rules of legal ethics, with a result that outraged the public while garnering praise in the legal world.

The lawyers represented a serial murderer, Robert Garrow, who in 1973 killed several people, including Boston College student Susan Petz. Garrow confessed the Petz murder to his lawyers and told them her body was at the bottom of a mine shaft in upstate New York. One lawyer lowered the other into the mine, where he took photos of the corpse, but under rules related to attorney-client privilege, they couldn't tell anyone. Even when Petz's father begged them for information about his daughter - was she alive? - they said nothing.

A court lauded them for maintaining a "sacred trust of confidentiality." But had they done the moral thing? The right thing? After the girl's body was discovered and their client was convicted, the lawyers were vilified, and they struggled terribly over their decision to

keep the girl's family in the dark. One had two heart attacks; the other ended up leaving the law.

"Right now, the legal system says, 'We don't care if relationships are destroyed, because this is about following rules and getting as much as we can,'" says Mark Perlmutter, a Texas lawyer and author of *Why Lawyers Lie*. "Is there another way? Yes, there really is."

**C**HERYL CONNER SITS IN HER SUN-dappled office in Newton, her face softening with compassion as she talks on the phone with yet another desperate lawyer. "You can be a good person and be a good lawyer," she assures him. "You don't have to leave the profession."

Conner gets at least one phone call like this a day. She's counseled hundreds of judges, lawyers, and law students unhappy in their work lives. "The profession is in a full-blown crisis," says Conner. "People are miserable." But she considers this a gift. "The crisis we're experiencing in terms of lawyer dissatisfaction and the lack of public confidence is actually calling us to rethink who we are," she says. "In that sense, it's a really great opportunity."

For eight years, Conner has been a leader in a quiet revolution sweeping the legal profession. Known as the progressive law movement, it posits human and spiritual values as an essential but ignored part of law practice. By spirituality, proponents don't mean a particular set of religious values, but rather a consideration of each individual's personal and moral guideposts: What is the societal value of my work? Who am I helping? Do I feel right about representing this client?

These kinds of questions deserve a prominent place in a lawyer's life because law isn't just a business, says David Hall, a professor at Northeastern University School of Law now writing a book titled *Rivers and Stones: A Call for Spiritual Revitalization of the Legal Profession*. "It's a calling with sacred overtones," he says, "which requires one to do something more than just chase clients and money."

Conner, who has worked with Hall on various initiatives in the progressive law movement, agrees. "We're taking back our natural ways of doing this that the law grabbed from us," she says. "It's about undoing what we've learned."

Last summer, after years of informally guiding those in distress, Conner created New Prospects for Justice, which offers retreats for legal professionals seeking to bring morality and personal values into their work. "I think lawyers are often yearning to express passion and compassion and intuition and wisdom," Conner says, "but they've been trapped in a more limited

perspective of what they can do."

Conner's academic and professional credentials give her an intellectual gravitas that comforts those in the hyperrationalistic world of law. She's a graduate of Harvard Law School with a master's degree in economics from the University of Michigan, a former assistant US attorney who also worked at one of Boston's biggest and most influential law firms, Goodwin Proctor.

Her own transformation started about eight years ago, when, as a Massachusetts assistant attorney general, she became frustrated with the limitations of litigation. Around the same time, while hiking in Colorado, she met a Tibetan Buddhist master who deeply influenced her. Conner began studying Buddhism and Eastern thought, which led her to contemplate how rules-based legal training alters the way lawyers perceive the world and treat their clients. Soon thereafter, she took a position as director of intern programs at Suffolk Law School, where she received a grant to teach contemplative meditation. That's when she started getting calls.

"These were people who wanted to talk about integrating ethical, spiritual, and religious values within law practice," she says. So she organized a conference at Suffolk six years ago called "Beyond the Code: Can Spiritual Values Be Our Compass?" It marked the first time that a formal conversation on spirituality and the law took place in Boston. "It gave lawyers permission to come out of the closet," she says.

Until that point, lawyers' frustration had focused on process: specifically, hating litigation. "But we were getting to a deeper level," Conner says. "We were saying, 'It's the whole way we relate, to clients and each other and the context of human lives.'"

Her thinking began to catch on. In 1998, she and Rita Pollak founded Lawyers with a Holistic Perspective, a monthly discussion group that became a launching pad for new approaches to law practice. Pollak and David Hoffman created the Collaborative Law Council, a more cooperative and less expensive way to handle divorce cases, which now has more than 200 lawyers in Massachusetts. A number of lawyers joined efforts in restorative justice, a victim-centered method of handling criminal cases, and the Restorative Justice Center was formed at Suffolk University. Other lawyers formed The New Law Center, a Newton firm that works to resolve legal matters without going to court. Under Conner's guidance, both Suffolk Law School and Boston College Law School hosted seminars for judges and lawyers interested in creating a more humane and satisfying legal system.

And recently, Conner joined the Tobac-

co Products Liability Project at Northeastern University School of Law, where she is researching topics related to lawyer ethics and accountability in tobacco litigation. Through her consulting business, she continues to offer retreats, and she is writing a law review article on the importance of the lawyers' oath as a guiding principle for behaving morally.

Does she believe that the legal profession will change dramatically in coming years?

"I do," she says. "I see a day when an even smaller number of cases are considered for litigation, a

day when we have a totally different view of conflict." She pauses and smiles. "It's a very exciting time."

**T**HE DIVORCE WAS CONTENTIOUS, involving young children, a shared business, a home, and crushing debt. From morning through dusk on a cool October day, the two lawyers and the spouses huddled around a table in a crowded Middlesex County Courthouse hallway, sharing a single bag of pretzels and a couple of sodas as they worked out the details.

"We kept at it," recalls Olive Larson, attorney for the wife, and a partner at a new law firm, the Boston Law Collaborative. "Nobody threw down the pencil and said, 'That's it! I'm going to the judge.'"

The next morning, when Larson turned on her office computer, a surprising e-mail awaited her. It was a thank-you – from her client's husband. "I don't think that's ever happened to me before in all the years I practiced," says Larson, who's been a litigator for 15 years.

She had set an alternative tone throughout, even agreeing at the

last minute not to file divorce papers, because the husband's lawyer promised to work cooperatively. "Not a lot of law firms would have held those papers," notes Larson. "We immediately stopped posturing and tried to resolve it."

A few weeks earlier, the collaborative's founding partner, David Hoffman, got a similar compliment in the form of an unlikely case referral from a client's former husband. "He said he really respected not only what David did for his ex-wife, but how David treated him as the opposing party," explains Melissa Filgerleski, the firm's senior paralegal and point-person for new clients. "That's why he wanted his friend to come here."

Thank-yous and referrals from an opposing party are rare in the contentious world of law, especially in divorce cases. But the Boston Law Collaborative sees the law as a healing force in which everyone should be treated with respect. Litigation is an option – a necessary one in some situations – but only a last resort, because of its emotional and financial costs.

The difference between clients

when they first walk through the collaborative's doors, despondent and fearful, and afterward is so striking that the firm jokes that it should videotape them. "We could call it 'Extreme Legal Makeover,'" quips Daniel Sinrod, a young paralegal.

"The whole goal here is to make things better for people, to keep them intact as human beings, as opposed to just making money," explains Israella Brill-Cass, the firm's case manager.

The Boston Law Collaborative is unusual in two respects. First is its emphasis on collaborative resolution (only a quarter of its cases are litigated). The second is that the firm regards clients as people who need support above and beyond solutions to legal problems. The firm is formally associated with two psychotherapists, a workplace consultant for employment disputes, and a financial adviser. This "multidoor, multidisciplinary" approach is unique in New England; indeed, there are probably fewer than 10 similar firms in the country.

"We are developing what I

really believe is not only a more humane way that's more integrated with human values," Hoffman says, "but one that's also forging a new way to practice law."

Hoffman's approach has struck a chord. In a little over a year, the firm has grown from just himself and one assistant to 12 lawyers, paralegals, and others, and it recently moved into larger offices. In contrast to the formal, heavy air at many firms, the collaborative feels youthful, energetic, light. "These lawyers are happy, and that's unusual, from my experience," says Wolman, who provides psychotherapy to the firm's clients. "They like each other, they like coming to work here."

For Hoffman, who was a leader in developing alternative dispute resolution in the Boston area, creating a new way of practicing law grew out of his own spiritual journey. He took a six-month sabbatical in the summer of 2000 to hike the Appalachian Trail with his teenage son. On that trip, he became more connected to his own Jewish tradition, and especially the concept of *sikkun olam* – betterment

of the world, bringing harmony through justice and peace, and relieving human suffering.

But he found that traditional law practice, even at Hill & Barlow where his mediation work was supported, made little room for this approach. "Here, we're not just giving them answers to their legal problems," he says, "but also a sense of 'Wow, I can get through this!'"

**O**N THE FIRST DAY OF CLASS for his law students at the University of San Francisco, ethics professor Richard Zitrin writes on the blackboard, "Think Like a Lawyer." Then he crosses it out and writes, "Remember to Think and Feel Like a Person."

"I don't see a bunch of amoral people sitting out there when they first get to law school," says Zitrin, who is a former chairman of the State Bar of California's Committee on Professional Responsibility and Conduct. But legal education's rules-based approach and emphasis on adversarialness create an amorality, he says, and it's up to law schools to turn that around.

Benjamin Sells, a former Chicago litigator who later became a psychotherapist for lawyers, agrees. "What if we told students in their first year of school that 'fairness' is the symphony, but we have to learn the scales first?" says Sells, author of *The Soul of the Law*. "And when they get to where they're completely capable of the scales – the rules and doctrines – then we'll go back to the big words like 'fairness' and 'justice' and 'equality?'"

Such ideas are taking root throughout the United States. In San Francisco, Peter Gabel, who with Harvard's Duncan Kennedy founded the critical legal studies movement in the 1960s, started the Institute for Spirituality and Politics for lawyers interested in bringing a spiritual perspective to social justice. Meanwhile, a small number of law schools are offering courses in contemplative meditation, morality, and ethics. While collaborative law was born in Minnesota and the International Alliance of Holistic Lawyers began in Vermont, Boston has emerged as the center of the progressive movement, in large part because of the leadership of Conner

and others in her circle, including Hall and Hoffman.

Five years ago, the Center for Contemplative Mind in Society in Northampton began offering retreats for lawyers and judges interested in creating a more just and compassionate legal world. It now has more than 650 lawyer-members in the United States, says Heidi Norton, who served as law program director. *The Harvard Negotiation Law Review* hosted a conference on mindfulness meditation in dispute resolution with national leader Len Riskin that drew more than 150 lawyers and law students, and last spring, Harvard launched the Harvard Negotiation Insight Initiative, which is applying the "great wisdom traditions" – philosophical, ethical, and spiritual practices – to conflict resolution.

Even some of Boston's largest and most formal firms have stepped into this new world. Hale and Dorr and the firm Nutter, McClennan & Fish, for example, have offered classes in insight meditation or yoga to their lawyers. And every Thursday evening in a small conference room with a sweeping view

of South Boston, a group of lawyers from the city's largest law firm, Bingham McCutchen, stand in bare feet and sweat clothes, bodies twisted in classic yoga positions. The room is softly lit, the only sound the soothing voice of the apple-cheeked man at the front. "Breathe. Close your eyes. Remember, this is not a competition," advises Justin Morreale, one of Boston's most powerful corporate attorneys, who's been teaching yoga at the firm since 1995.

For many observers, this new way of thinking is long overdue. The legal profession is 25 years behind the medical world in exploring alternative approaches, says Erica Fox, who left a large Boston firm and later created the Harvard Negotiation Insight Initiative. And it's decades behind the business world, too, where large companies like Merck and Procter & Gamble have realized the importance of spirituality and values in keeping employees satisfied and productive. "Businesses are much more

responsive and open to change than law firms," says Hoffman. "In the world of law, it's unusual that a firm would take the risk of appearing too 'touchy-feely.'"

No one is suggesting the conservative world of law will quickly or completely change. Even the harshest critics of litigation concede there are times when a judge's intervention is not only appropriate but essential. And there will always be lawyers who prefer the status quo. When Sells lectures to bar groups around the country, he typically finds 25 percent of lawyers repelled by his notions of spirituality in the law, another 25 percent desperate for his message, and the middle group open to new ideas for improving the profession.

"This is about trying to create a legitimate path for those lawyers who feel that something is missing in their practice," says Hall. "This is to let them know they have another alternative than suffering or leaving the profession." □