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ESSAY

ORGANIZATIONAL BARRIERS TO CREATIVITY IN LAW SCHOOLS AND THE LEGAL PROFESSION

KATHARINE ROSENBERRY[*]

I. INTRODUCTION

Have you ever heard a parent say to a child, "Please don't write on the walls or you will be punished" or "You color very well, but the flower could be even prettier if you colored within the lines" or "Stop daydreaming?" There is nothing inherently wrong with these statements. If a child continues to write on walls he may become a vandal, and if one never stays within the set boundaries or constantly daydreams, she is not likely to be successful in school or work. These statements, however, also build barriers to creativity and creative problem solving.

One may question whether it is important for those in law schools and the legal profession to be concerned with barriers to creative problem solving. The answer is, "Yes."

It will come as no shock to lawyers that some areas of law practice are changing rapidly. Some clients are rejecting billable hours, thus requiring lawyers to devise new billing methods; courts and legislatures are requiring lawyers to create new procedures for solving problems; and the globalization of practice is requiring many lawyers to increase their knowledge of other cultures. Many lawyers want a more balanced life and satisfying practice, requiring firms to recognize that for some, money alone is no longer a sufficient incentive to join or stay with a firm. And of course the internet has had, and will have, a major impact on the practice. One technology expert has even

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speculated that technology "means the end of the professional monopolie[s] in law, medicine [and] education."[1]

Some fields of law are also changing rapidly. We have had several hundred years to work out landlord tenant law. We do not have the luxury of time when trying to create the law relating to cloning or legal issues generated by information technology.

Abraham Maslow said, "When the only tool you own is a hammer, every problem begins to resemble a nail."[2] Those in the legal profession who respond to a rapid change by broadening their repertoire of approaches for preventing and solving problems are more likely to be successful in their practices and feel more personally fulfilled. In a rapidly changing world the nature of problems change; in order to respond, one needs a box full of tools. Therefore, it is important to recognize ways to facilitate creativity and creative problem solving.

I first became interested in creative problem solving in a legal setting when an owner in a large condominium project in Paris related the following story. A neighbor in his condominium failed to pay his assessments on time. Instead of immediately resorting to legal procedures, the association inquired and discovered that the owner had not paid his assessments because he had lost his job. So they loaned him money at market rate interest to pay the late assessments. The other owners then contacted their friends and relatives and found the person a job, making it possible for him to pay back the loan and pay assessments on time in the future. This approach not only solved the immediate problem, it prevented the problem from arising again. It also created a sense of community.[3]

This solution was not stumbled upon because of the absence of governing law. French condominium law is similar to American law.[4] If an owner does not pay assessments the association can ask the court to force a sale of the unit. That legal remedy was not used in the example above because a less confrontational, more supportive alternative was found. The availability of legal remedies is essential, but they should not and need not displace creativity in problem solving.

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1. Bart Kosko, *Will the Internet Change Humanity?*, in CLOSER TO TRUTH: CHALLENGING CURRENT BELIEF 255, 258 (Robert Lawrence Kuhn ed., 2000). Several people on our faculty have been seriously ill. One of the first things they all did was go to the Internet to find out about their illnesses. Some of these people had more information on their particular disease than their doctors did. It is not unreasonable to assume an increasing number of clients will learn something about the law relevant to their cases from the Internet.

2. Abraham Maslow, *Famous People Quotations*, http://quotations.about.com/od/ still-morefamouspeople/a/AbrahamMaslow1.htm (last visited Mar. 28, 2005).

3. One should not assume this is a typical French response to assessment collection. I believe, instead, it reflects a culture that has been created in the particular community.

4. *See* CODE CIVIL, art. 19 (Loi 10 Juillet 1965) (Fr.).

While the less confrontational approach will not always work, the story made me wonder why we do not think of creative solutions more often. What barriers are there in the legal setting to preventing and solving problems more creatively?

Before discussing the barriers, a few points need to be made. First, creativity and creative problem solving are not easily defined. Donald Treffinger, a cognitive psychologist who has been specializing in creativity for over 30 years, has collected 118 different definitions of creativity.[5]

There are also different definitions of creative problem solving. Teresa Amabile defines creativity as "the production of novel and appropriate solutions to open-ended problems."[6] An open-ended problem is one that does not have a clear definitive answer such as one plus one equals two. Lawyers usually deal with open-ended problems.

Abraham Zaleznick states that creative problem solving "reflects a major shift both in the definition of problems and the approach to solutions."[7] The approach used at California Western School of Law is similar to the approach of Zaleznick. It focuses on expanding the context in which the problem is defined and broadening the students' repertoire of approaches to preventing and solving problems.

Second, it is important to acknowledge that there are many highly creative lawyers. I have found that those who are most creative are also the ones most interested in removing the barriers to creativity. By removing the constraints even the most creative in our profession can become more creative.

Third, not all problems require a creative solution. When I first started practicing, I represented auto insurers and handled many fender-bender cases. The complaints were very similar, so it was not necessary to be particularly creative when drafting answers to the complaints. While not all problems need to be resolved creatively, obviously, some do. Therefore, learning how to encourage creative problem solving is important for all in the legal profession.

Fourth, although some researchers attempt to distinguish between individual and organizational constraints, I will not because individual and organizational barriers are integrally related.[8] An individual is

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5. *See generally* DONALD J. TREFFINGER, CREATIVITY, CREATIVE THINKING, AND CRITICAL THINKING: IN SEARCH OF DEFINITIONS (Center For Creative Learning, Idea Capsule Series, 2000).

6. Teresa M. Amabile, *Entrepreneurial Creativity Through Motivational Synergy*, 31 J. CREATIVE BEHAV. 18, 18 (1997).

7. Abraham Zaleznick, *Making Managers Creative: The Psychodynamics of Creativity and Innovation, in* HANDBOOK FOR CREATIVE AND INNOVATIVE MANAGERS 35, 36 (Robert Lawrence Kuhn ed., 1987).

8. Cameron M. Ford, *Creativity Is a Mystery, in* CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES 12, 21 (Cameron M. Ford & Dennis A. Gioia

more likely to think of creative solutions to problems if the environment is supportive of creative individuals, and creative individuals may be able to make their work place a more creative environment.

Fifth, most of the research on barriers to creativity in the work place has been conducted in businesses that produce a product. Although some research has been conducted in academic institutions, to my knowledge no research has been conducted in law firms or law schools. Some of the lessons learned in other businesses may not be directly applicable to academia or the practice of law;[9] but some are. Because of the rapid changes in both the law and its practice, those of us in the legal profession do not have time to wait for the results of research done in our field. Schools and firms need to think about creativity now. Richard Florida states that businesses unwilling to create a workplace "amenable to creative work ... will wither and die."[10] Many others share his opinion.[11]

Finally, my purpose in writing this essay is not to provide a comprehensive discussion of constraints on creativity in a legal setting. Instead my purpose is to draw on fields such as cognitive psychology, neuroscience, and business organization theory to further a discussion of barriers to creative problem solving and how to overcome them. The more the constraints are recognized and discussed, the more likely the profession is to generate creative ideas for overcoming them.

II. STRUCTURAL BARRIERS

Research has shown if creative people cannot change their environments they either leave or become less creative in their work.[12] Some researchers have even found that creative individuals "will perform worse than their less talented co-workers" if the environment sti-

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eds., 1995); *see also* Richard Woodman, *Managing Creativity, in* CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra*, at 60, 61.

9. Fariborz Damanpour, *Is Your Creative Organization Innovative?, in* CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra* note 8, at 125, 128-29.

10. RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS: AND HOW IT'S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE 13 (2002).

11. *See* Dorothy Leonard & Susaan Straus, *Putting Your Company's Whole Brain to Work, in* HARVARD BUSINESS REVIEW ON BREAKTHROUGH THINKING 57 (1999); *see also* Anne Cummings & Greg R. Oldham, *Enhancing Creativity: Managing Work Contexts for the High Potential Employee*, 40 CAL. MGMT. REV. 22, 37 (1997); Damanpour, *supra* note 9, at 129; Min Basadur, *Impacts and Outcomes of Creativity in Organizational Settings, in* NURTURING AND DEVELOPING CREATIVITY: THE EMERGENCE OF A DISCIPLINE 287 (Scott G. Isaksen, et al. eds., 1993); KARL ALBRECHT & STEVEN ALBRECHT, THE CREATIVE CORPORATION 3 (1987).

12. Ford, *supra* note 8, at 25.

fles creativity.[13] Therefore, it is important to recognize the structural constraints on creativity in law schools and the practice.

Some structure in a law school or firm is a good thing. Creativity rarely thrives in chaos. Environments that wish to encourage creativity need that structure to nurture creativity. An organization with a structure that is rigid, hierarchical, stresses conformity, and emphasizes status symbols, however, inhibits creativity. This is even more pronounced in service organizations.[14] One way this structure inhibits creativity is by restricting the flow of information.

In a rigid hierarchy, the flow of communication is from the top down.[15] If a law firm has a rigid hierarchy, the firm's culture assumes that the senior members should share their knowledge and advice with junior members. It does not assume, however, that the junior members should in turn share their knowledge and advice with the senior members.

There are obvious advantages of having the senior people share their information and advice. People with the most seniority usually have at least two traits that contribute to creative problem solving: expertise and tolerance for ambiguity.

A. Expertise

People who are at the top of the hierarchy have generally been in the profession for some time.[16] Experienced law school faculty and lawyers are likely to have a depth of knowledge in their field, which is essential for creativity.[17] It is difficult to think of a creative solution to a tax problem if one does not know tax law. The "ah-ha" moments do not come in a vacuum.

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13. *Id.* at 29.

14. "Because of the nature of their activities, service workers need more flexibility and less bureaucratic control to deliver their services effectively. Accordingly, the negative effect of formalization and hierarchical control on both creativity and innovation is more pronounced in service organizations." Damanpour, *supra* note 9, at 128; *see also* HARVEY J. BRIGHTMAN, PROBLEM SOLVING: A LOGICAL AND CREATIVE APPROACH 30 (1980); Edwin A. Locke & Shelley A. Kirkpatrick, *Promoting Creativity in Organizations, in* CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra* note 8, at 118-19; Richard M. Cyert, *Designing a Creative Organization, in* HANDBOOK FOR CREATIVE AND INNOVATIVE MANAGERS, *supra* note 7, at 185, 192.

15. *See* Cyert, *supra* note 14, at 192.

16. This is obviously a generalization. It is possible for a small firm to have all relatively new attorneys.

17. *See* Robert W. Weisberg, *Training Creativity in the Corporation: The View From the Psychological Laboratory, in* CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra* note 8, at 131, 136 (suggesting that training employees in the domain-relevant skills may be more important than training in creativity).

While knowledge in a field is essential, too much knowledge or the wrong kind of knowledge can be detrimental. Too much specialized education can lead to rigidity of thought. Miller tells a story in *The Creative Edge* about a workshop held to identify new metal materials.[18] The organizers ended up having to invite some non-metallurgists to help generate new ideas because the metallurgists knew too much about what you cannot do with certain metals.[19]

Amabile, however, challenges the commonly held notion that too much knowledge of domain-relevant skills inhibits creativity.[20] She maintains that it is not knowledge per se that is the problem; it is how an individual organizes the knowledge.[21] Knowledge organized according to a specific set of facts, specific concepts, or specific propositions will inhibit creativity.[22] "[K]nowledge organized according to general principles will be of greater utility" to creativity.[23]

Think back to when you first started in your profession. Maybe your experience was similar to mine. When I first started teaching, I lacked self-confidence and was panicked that I did not know every relevant law review article or law, including the splits of authority. Today, I am comfortable reasoning in the field because I know the underlying concepts or in Amabile's terms, I have my "knowledge organized according to general principles,"[24] permitting me to reason through to a solution that some court has probably used somewhere.

B. Tolerance for Ambiguity

Experience in the legal field also leads to another trait that is essential for creativity: an increased tolerance for ambiguity.[25] Robert Epstein believes creative ideas are preceded by a feeling of confusion or ambiguity.[26] Racing to judgment, which is discussed later, is a ma-

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18. WILLIAM C. MILLER, THE CREATIVE EDGE: FOSTERING INNOVATION WHERE YOU WORK 111-12 (1986).

19. *Id.*

20. *See* Teresa M. Amabile, *A Theoretical Framework: The Components of Creative Performance, in* CREATIVITY IN CONTEXT: UPDATE TO THE SOCIAL PSYCHOLOGY OF CREATIVITY 81, 87 (Teresa M. Amabile et al. eds., 1996).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. Bart Kosko, a professor of electrical engineering at the University of Southern California said, "I usually find myself saying that there's nothing uncertain about uncertainty if you're very certain you don't know something. Or you're not sure. And you learn to live with it." Kosko, *How Does Technology Transform Thinking?, in* CLOSER TO TRUTH: CHALLENGING CURRENT BELIEF, *supra* note 1, at 203, 207.

26. Videotape: Creativity Training at California Western School of Law (Robert Epstein 2000) (on file with California Western School of Law Library).

jor deterrent to thinking of creative solutions; comfort with ambiguity and confusion are necessary for creativity.

Unfortunately, our brains work against us. The mind has a "tendency to assume it has the whole picture on first glance"[27] missing important aspects of the picture. Further, it does not like confusion or contradiction. Freeman reports a study where subjects were asked to look at two different images simultaneously, one in each eye.[28] The subjects saw either one image or the other.[29] The brain did not perceive ambiguity.[30]

Think about your physical reaction to ambiguity. For many it creates discomfort. Bohm, a physicist, says that when presented with conflicting beliefs there is a self-sustaining confusion, and one's intention is really to avoid perceiving the conflict rather than to sort it out.[31] The problem is even worse for those in a Western culture. Jennifer James, a cultural anthropologist notes: "Americans often prefer extremes to ambivalence."[32]

Brightman demonstrated the problem by giving the following facts to a group of students: "Works in factory, reads a newspaper, goes to the movies, average height, cracks jokes, strong, active."[33] The students had no trouble deciding this was a factory worker.[34]

Then one fact was added: "intelligent."[35] The students had trouble with the fact that a factory worker could be intelligent; so they decided either that the factory worker had to be lazy or he was a foreman.[36] An energetic intelligent factory worker did not compute.[37]

I enjoy teaching first year law students for several reasons. One reason is that most start out assuming there are correct answers to every legal question and end by realizing that often "it depends." I suspect lawyers, law professors, and law students have a greater ability to see several sides of an issue than the general public has because of our training. We learn to expect and become comfortable with ambiguity. This aspect of our training can encourage creativity.

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27. TARA BENNETT-GOLEMAN, EMOTIONAL ALCHEMY: HOW THE MIND CAN HEAL THE HEART 4 (2001).

28. WALTER J. FREEMAN, HOW BRAINS MAKE UP THEIR MINDS 115 (1999).

29. *Id.*

30. *Id.*

31. DAVID BOHM, ON CREATIVITY 21 (Lee Nichol ed., 1998).

32. JENNIFER JAMES, THINKING IN THE FUTURE TENSE: A WORKOUT FOR THE MIND 191 (1996).

33. *See* BRIGHTMAN, *supra* note 14, at 45-46.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

C. *Interest in Maintaining Status Quo*

While there are advantages to having the most senior lawyers and professors share their knowledge with the younger people, there are also disadvantages of having only a one-way flow of communication. People at the top of the hierarchy can become insulated and out of date. They also may have an interest in maintaining the status quo, which constrains creativity.[38]

There may be a tendency for long-time law professors and lawyers to maintain their tolerance for ambiguity in the law but not in their profession. This may be particularly true if one has been successful and, thus, relies on patterns that have worked in the past without considering that old patterns may not work in a changing environment.

Unfortunately, after the age of about forty-five many of us begin to cling to the past and be less open to new approaches.[39] Thus, "Fred Smith, while a student at Yale, came up with the concept of Federal Express, a national overnight delivery service. The U.S. Postal Service, UPS, his own business professor, and virtually every delivery expert in the United States predicted his enterprise would fail."[40] It may also be the reason students in the 1950s more readily accepted the new theory of continental drift than did the older scholars who were invested in the status quo.[41]

The advantages of expertise and comfort level with ambiguity need to be balanced with the potential flexibility and fresh approaches of those newer to law school and the profession. This will only occur, however, if there is a free flow of communication between those at the top and those lower on the hierarchy. Therefore, it is important to think about the culture that has been created in the school or legal environment. Are those lower on the hierarchy truly comfortable offering their opinions even if their opinions are contrary to those with more seniority and power?

Warren Bennis found that seven out of ten people will not speak in a meeting if what they have to say violates the conventional wisdom.[42] The problem is magnified in a rigid hierarchy where people

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38. *See id.* at 45, 47.

39. *See* JAMES, *supra* note 32, at 35.

40. MICHAEL MICHALKO, CRACKING CREATIVITY: THE SECRETS OF CREATIVE GENIUS 5-6 (1998).

41. Neil De Grasse Tyson, *What Are the Next Breakthroughs in Science?*, *in* CLOSER TO TRUTH: CHALLENGING CURRENT BELIEFS, *supra* note 1, at 325, 331. For an amusing and scathing assessment of senior academics in the field of science by a young scientist see JAOA MAGUEIJO, FASTER THAN THE SPEED OF LIGHT: THE STORY OF A SCIENTIFIC SPECULATION 114 (2003).

42. *See* JAMES, *supra* note 32, at 139 (citing Warren Bennis study).

lower on the hierarchy are less likely to have influence over decisions, and, therefore, are less likely to contribute creative ideas.[43]

While law students, professors and lawyers may be more willing than the average person to speak in a group, if they fear direct or indirect reprisals for offering opinions that contradict authority figures, the environment will be less creative.[44] To have a creative environment, all must feel free to constructively challenge ideas.[45]

Law school cultures can be intimidating. Developing the ability for critical analysis is essential if one hopes to be a good lawyer. However, we in the profession need to recognize that the power imbalance between student and faculty can be intimidating and thus inhibit creativity.

While I doubt that most professors are still using the approach used by Professor Kingsfield in the movie *The Paper Chase*,[46] I am confident many students find the Socratic method intimidating. I first learned this lesson as a relatively new teacher when a student told me I was intimidating. I could not imagine what his or her opinion was based on. I do not look the least bit intimidating and had not thought of myself in this manner. After talking with the student, I realized the fact that I was a professor and had more knowledge about the field of law than the student had was enough to make him think I was intimidating.

I am not suggesting the Socratic method is inappropriate or that some students do not learn best through a bit of intimidation. Not all students, however, learn through intimidation; intimidation will prevent some, if not many, students from using either an analytical or non-analytical process creatively.

New lawyers and law school professors can also be intimidated. Schools and firms need to create an environment in which the opinions of the newer faculty and associates are valued if they expect to hear them.

One way to find out if students and people new to the profession feel free to offer their opinions is to ask them. Obviously, the extent of candor received will depend on who is asking the question and the manner in which the question is asked. Body language is as, or more, important than words.

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43. *See* Tyson, *supra* note 41, at 331; *see* MAGUEIJO, *supra* note 41, at 114.

44. Michael A. West, *Creative Values and Creative Visions in Teams at Work, in* CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra* note 8, at 71, 75.

45. *See* Amabile, *supra* note 20, at 120 (listing positive and negative extrinsic factors).

46. THE PAPER CHASE (Twentieth Century Fox 1973) (on file with California Western School of Law Library) (Professor Kingsfield used a very intense and intimidating version of the Socratic method as his teaching technique.).

I learned the hard way that people lower on the hierarchy are sometimes just looking for an opening to offer their opinions. When I first started working in England on a sabbatical, I was a guest at a Christmas party at Lincoln's Inn. I was teasing (sort of) a partner about the role of women associates in the firm. It appeared to me that sensitivity to discrimination against women in the work place lagged behind that in the U.S. He assured me that there was no discrimination against female associates in his firm. At this point two young female associates, who overheard our conversation, told him they did not agree. They started a heated discussion so I thought it was a good time to excuse myself.

Not all junior associates are this bold. To encourage people to offer ideas that contradict the conventionally accepted wisdom or opinions, some of the techniques developed for the business world can be introduced into the legal profession. A simplified version of one technique developed by Edward De Bono is to have everyone first consider why a proposed solution to a problem is good, next offer suggestions for making it even better, and then have everyone criticize the suggestion.[47] This technique can prevent premature dismissal of a creative idea, and those with less power are more likely to offer opinions because in each phase of the process everyone is on the same side.

This may sound like a contrived situation to some; however, I know the process can work. Our faculty used the more elaborate De Bono technique, described in *Six Thinking Hats*,[48] when approaching a particularly difficult problem. The process prevented us from immediately criticizing proposed ideas, which is sometimes our natural tendency. The process also encouraged everyone to participate resulting in some creative ideas.

Not all problems justify using such a formal process. The first step, however, is to recognize that in order to have a creative environment, information must flow from top to bottom and bottom up. Once the need is recognized, it is not difficult to find ways of encouraging those who have less power in the organization to participate.[49]

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47. *See generally* EDWARD DE BONO, SIX THINKING HATS (Back Bay Books 1999) (1985).

48. *Id.*

49. There are too many books of creativity exercises to cite. For a discussion of creativity exercises in a legal setting, see Janet Weinstein & Linda Morton, *Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education*, 9 CLINICAL L. REV. 835 n.1 (2003); Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?* 6 HARV. NEGOT. L. REV. 97, 98 (2001). *See generally* MICHELLE LEBARON, BRIDGING CULTURAL CONFLICTS: A NEW APPROACH FOR A CHANGING WORLD (2003); MICHELLE LEBARON, BRIDGING TROUBLED WATERS: CONFLICT RESOLUTION FROM THE HEART (2002).

D. Failure and Risk Taking

Failure is a part of the creative process. Ray Kurzweil, a successful inventor and founder of four high-technology companies was asked if he ever failed. He responded:

> An important part of creativity is failure and one's attitude toward it. My view of failure is that it's just success deferred. But not everybody feels that way. If you're afraid of failing, if that's a devastating experience, then you can't be creative. You have to see disappointment as part of the inner process of getting to where you need to go.[50]

When Edison was asked how he dealt with the failures that preceded the discovery of incandescent lightbulb, "he didn't understand the question."[51] He did not feel those experiments were failures; as far as he was concerned "he discovered thousands of things that did not work."[52]

I once heard a professional speaker tell a story about failure.[53] He said that an IBM employee made a $50,000 mistake. The employee assumed he would be fired so he tendered his resignation. His boss refused to accept his resignation saying, "We have just invested $50,000 in your education. Why would we get rid of you now?" I do not know if the story is true, but I thought it was an interesting response. I doubt that a similar response would be the first one given by most law offices.

My son works in Silicon Valley in a company that depends on creativity for its survival. When researching this essay, I called my son and asked him what his employer would do if he were failing on a project. He said, "That happens," in an off-hand manner. He did not seem to have any anxiety associated with failure. His company thought of failure as part of the process.[54] Law students, new law professors and associates are likely to have more anxiety associated with the concept of failure.

Creativity requires risk taking. Risk taking occasionally results in failure. If the culture discourages risk taking or failure, either directly

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50. Ray Kurzweil, *What's Creativity and Who's Creative?*, in CLOSER TO TRUTH: CHALLENGING CURRENT BELIEF, *supra* note 1, at 155, 163 (Robert Lawrence Kuhn ed., 2000).

51. MICHAEL MICHALKO, CRACKING CREATIVITY: THE SECRETS OF CREATIVE GENIUS, *supra* note 40, at 85.

52. *Id.*

53. This story was told by a keynote speaker at a Community Association Institute Conference in the 1990s, which I attended.

54. Obviously, one cannot draw conclusions from a sample of one, and I am talking about a matter of degree. I assume if an employee constantly fails, he or she would be fired.

or indirectly, it is unlikely that those working in the environment will develop creative solutions to problems.

1. Humor

When identifying the traits of creative people, specialists differ. All I have read, however, cite humor and a sense of playfulness as essential characteristics of creative people.

"Einstein described creativity as 'combinatorial play.'"[55] Bohm, also a physicist, states "creative play is an essential element in forming new hypotheses and ideas. . . . Play, it appears, is of the very essence of thought."[56]

Different reasons are given to explain the importance of humor. De Bono explains that humor and creativity occur when one jumps the track.[57] Mark Twain said, "Always do right. This will gratify some people, and astonish the rest."[58] Notice how you continue along one track until the statement "and astonish the rest." Using De Bono's terminology, at that point, one jumps mental tracks.

Many lawyers are creative when using analytical reasoning. When trained in a variety of non-analytical techniques, however, lawyers can learn to jump the track.[59] By jumping the analytical track, one may find even more creative solutions to the problem. A legal environment can encourage creativity by encouraging training in these various techniques.

A school or firm can also make clear that it values humor. In my second year of teaching, I went to a meeting of about 500 law professors. Before the meeting a colleague joked, "You will never be taken seriously. You smile too easily. You are going to have to learn to put your finger to your chin, look serious, and ponder." I knew he was teasing, but apparently most at the meeting did not. The vast majority looked very serious even though the topic did not merit such heaviness.

Again, it is important to consider the culture that has been created in the law school or law firm. If two people are laughing in the halls is it assumed that they are "working" or that they are "wasting time"? Are people who are amusing recognized as "serious" lawyers?

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55. Amabile, *supra* note 20, at 101.

56. DAVID BOHM & F. DAVID PEAT, SCIENCE, ORDER AND CREATIVITY 48 (2d ed. 2000).

57. EDWARD DE BONO, SERIOUS CREATIVITY: USING THE POWER OF LATERAL THINKING TO CREATE NEW IDEAS 148-49 (1992).

58. MARK TWAIN, THE WIT AND WISDOM OF MARK TWAIN 6 (Alex Ayers ed., Penguin Books 1990) (This quote appeared in a card sent in 1901 to the Young People's Society at the Greenpoint Presbyterian Church in Brooklyn.).

59. *See generally* sources cited *supra* note 49.

Of course, the answer depends in part on the circumstances. Humor is not always appropriate; one must consider time, place and manner. Instead of automatically assuming that one is not serious or professional if one is humorous, however, it is important to remember that a sense of humor is essential for creativity. Jennifer James makes an even stronger statement. James states that a "sense of self-worth and . . . a sense of humor are the two most important traits one needs in order to adapt to a rapidly changing world." [60]

At the next meeting, perhaps instead of beginning with the line, "It is time to settle down and get serious," one should say, "It is time to lighten up and get funny."

> Humor is not peripheral to creative environments. Rather than being a luxury, humor is an essential component of a creative atmosphere. It allows people to say 'stupid' things . . . that turn out not to be so stupid. It allows the tentative presenter of an off-the-wall idea, [that may have value], to disguise it as a joke. [61]

2. Self Image

All of us are at one time or another concerned about looking foolish. [62] Brightman gives the example of a meeting called to develop an innovative education Ph.D. program. [63] Because one participant was tired of hearing jargon he fabricated some jargon. [64] No one questioned him and several nodded their heads in agreement. [65] I suspect this fear of appearing foolish is greater among those in professions like law where one is supposed to be smart and where finding fault with ideas is part of the culture.

Fear of appearing foolish by offering unusual ideas may be a rational fear. According to a study by Kirton, there is a tendency to dismiss the ideas of people who frequently offer unusual solutions. [66] Therefore, those who are at the top of the hierarchy must be conscious

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60. JAMES, *supra* note 32, at 175.

61. R. DONALD GAMACHE & ROBERT LAWRENCE KUHN, *Why Creativity Doesn't Start: Barriers of Inertia and Attitude*, in THE CREATIVITY INFUSION: HOW MANAGERS CAN START AND SUSTAIN CREATIVITY AND INNOVATION 19 (1989).

62. *See* BRIGHTMAN, *supra* note 14, at 49; *see also* Min Basadur, *Impacts and Outcomes of Creativity in Organizational Settings*, in NURTURING AND DEVELOPING CREATIVITY: THE EMERGENCE OF A DISCIPLINE, *supra* note 11, at 287; J. GEOFFREY RAWLINSON, CREATIVE THINKING AND BRAINSTORMING 23 (1981).

63. BRIGHTMAN, *supra* note 62, at 49.

64. *Id.*

65. *Id.*

66. Basadur, *supra* note 62, at 286-87 (citing M.J. Kirton, *KAI Manual*, Hertsford, UK: Hatfield Occupational Research Center (1987)).

of the message they are sending to the newer people. If the senior people expect inexperienced people to offer their opinions, those with power need to make it clear that they value the opinions of the less experienced even if their opinions are unconventional.[67]

All in an organization need to be comfortable with occasionally looking foolish and making mistakes; one cannot be creative unless one is willing to do so. If the culture believes the "good" lawyer is one who is rational and does not make mistakes, lawyers in the firm are less likely to take risks and therefore less likely to be creative. Perhaps instead of assuming that a lawyer who is rational and does not make mistakes is a good lawyer one should assume "If one always hits the bulls-eye, one is standing too close to the target."[68]

3. Time and Stress

An environment that nurtures creativity gives people time to find creative solutions.[69] Western culture conceptualizes time as linear. The concept "time is money" is widely accepted in our culture; and the concept of billable hours reinforces this concept. We do not want to "waste" time. This poses a problem when one is faced with new situations that need creative solutions. Creative solutions cannot always be produced on demand.[70]

Another reason time is so important is that the first potential solutions a person or group identifies are likely to be the least creative. For example, if asked what 1 plus 1 equals, most of us would immedi-

67. See Andy Van Grundy, Organizational Creativity and Innovation, in FRONTIERS OF CREATIVITY RESEARCH: BEYOND THE BASICS 358, 366 (Scott G. Isaksen ed., 1987) (citing J. Hage & R. Dewar, Elite Values Versus Organizational Structure in Predicting Innovation, ADMIN. SCI. Q. 18, 279-290 (1973)).

68. Susan Golding, Address at California Western School of Law Commencement (Apr. 25, 1993) for which I was present and remember her remarks. She did not say whom she was quoting.

69. Amabile, supra note 20, at 231; Michael A. West, Creative Values and Creative Visions in Teams at Work, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, supra note 8, at 71, 74; see also Peter J. Frost, The Many Facets of Creativity, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, supra note 8, at 121, 122; Teresa M. Amabile, Discovering the Unknowable, Managing the Unmanageable, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, supra note 8, at 77, 81.

70. Teresa M. Amabile et. al., Assessing the Work Environment for Creativity, 39 ACAD. MGMT. J. 1154, 1159 (1996); Peter J. Frost, The Many Facets of Creativity, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, supra note 8, at 123. For an interesting article indicating that maybe some creative solutions can be produced on a time line see Connie J. G. Gersick, Everything New Under the Gun: Creativity and Deadlines, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, supra note 8, 142; see also Ford, supra note 8, at 35.

ately say "2." If given more time we may realize that the answer could also be "11" or "T" depending on where one puts the 1's.[71]

In order to think of more creative answers we need time for our minds to wander and visualize.[72] When we conclude too quickly, our responses are more typical and less creative.[73] Albert Einstein said, "It's not that I am so smart. I just stay with problems longer."[74] If we need to find a creative solution to a problem we often need to stay with the problem longer.

We also need time to let an idea incubate, for example, by going for a walk or taking a break from the problem. It is not surprising that research has shown people's most creative ideas often come when they are not focusing on the solution.[75] I suspect most of us have had creative ideas come to us suddenly while in the shower or driving to work.[76] Some lawyers do bill for time in the shower or driving to work when they have an insight that helps solve a client's problem. Associates, however, are unlikely to take a walk in the middle of the morning just to let an idea incubate if the firm expects them to bill for all the time "at work."

When I was researching the correlation between time and creativity, I again called my son in Silicon Valley. I asked him what would happen if he was working on solving a problem and not succeeding. Would his company ask him to try something else? He said if he was failing they would encourage him to continue to try. Failure is part of the system and usually they are given time to work out the solution.

Obviously, he would not be given an unlimited amount of time to find a solution. I was surprised, however, that his instant response was that he would be encouraged to take more time. I doubt that this would be the instant response in all law schools or firms.

A barrier that can be closely related to time is stress. A certain amount of stress encourages creativity.[77] Creative people need chal-

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71. *See* RAWLINSON, *supra* note 62, at 13.

72. *See generally* Cummings & Oldham, *supra* note 11, at 28. *See also* Teresa M. Amabile, *Social Environments that Kill Creativity, in* READINGS IN INNOVATION 1, 6 (Stanley S. Gryskiewicz & David A. Hills eds., 1992); GAMACHE & KUHN, *Generating and Evaluating Novel Ideas: How to Find and Assess Opportunity Areas, in* THE CREATIVITY INFUSION: HOW MANAGERS CAN START AND SUSTAIN CREATIVITY AND INNOVATION, *supra* note 61, at 115-16.

73. THOMAS B. WARD et al., CREATIVITY AND THE MIND: DISCOVERING THE GENIUS WITHIN 35 (1995).

74. Albert Einstein, *Famous People Quotations, at* http://quotations.about.com/od/still-morefamouspeople/a/AlbertEinstein1_p.htm (last visited Feb. 25, 2005).

75. *See* Amabile, *supra* note 20 at 101; JOHN J. KAO, MANAGING CREATIVITY: TEXTS, CASES & READINGS 17 (1991); *see also* GAMACHE & KUHN, *supra* note 61, at 115-16; RAWLINSON, *supra* note 62, at 26.

76. RAWLINSON, *supra* note 62, at 26.

77. I remember in college reading in a psychology textbook that 4% stress was beneficial, though it never said 4% of what type of stress was beneficial.

lenging, rather than repetitive, tasks.[78] Richard Florida, author of *The Rise of the Creative Class*, found that a challenging job was more important than money to those he categorized as the creative class.[79] Creative people do not want to be bored.

Too much stress, however, is an inhibitor of creativity. Excess tension shuts down the mind.[80] What is too much, of course, depends on the individual and the particular time in the person's life. If one is experiencing a serious illness, one is more likely to feel intense stress and be less creative.

In many schools and firms the most persistent stress is produced by a perceived lack of time to accomplish the tasks. If one needs or wants a creative solution, "[i]t is essential not to fill schedules with goal-directed, conscious, rational problem solving, so as to allow for the serendipitous combination of ideas."[81] As mentioned previously, people need some relatively stress-free time to come up with those solutions that make them think, "Wow, what a great idea!"

4. Feedback and Rewards

As mentioned, nurturing environments also offer positive feedback that helps create a sense of self-worth. James says that a sense of self-worth is one of the most important traits for adapting to a rapidly changing environment.[82] It is also essential for risk taking which was discussed previously.

Frequent constructive feedback fosters creativity.[83] Constructive feedback includes communicating the organization's goals, its need for creativity, and the fact that creativity involves making mistakes.[84] It also includes giving recognition for creative solutions.[85]

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78. Cummings & Oldham, *supra* note 11, at 27; *see also* Min Basadur, *Impacts and Outcomes of Creativity in Organizational Settings*, in NURTURING AND DEVELOPING CREATIVITY: THE EMERGENCE OF A DISCIPLINE, *supra* note 11, at 289.

79. FLORIDA, *supra* note 10, at 90.

80. JAMES, *supra* note 32, at 39.

81. Csikszentmihalyi Mihaly & Keith Sawyer, *Shifting the Focus from Individual to Organizational Creativity*, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra* note 8, at 167, 172.

82. JAMES, *supra* note 32, at 175.

83. Teresa M. Amabile, *Motivational Synergy: Toward New Conceptualizations of Intrinsic and Extrinsic Motivation in the Workplace*, 3 HUMAN RESOURCES MGMT REV. 185, 192 (1993).

84. "Creativity occurs when talented people are given a clear goal and the freedom to pursue the goal as they see fit." Timothy F. Price, *Principle-Based Creativity: Promoting Individual Initiative in Large Organizations*, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra* note 8, at 254; *see also* Cummings & Oldham, *supra* note 11, at 28; Amabile, *supra* note 83, at 192.

85. James L. Farr, *Q: Does Feedback Enhance or Inhibit Creativity in Organizations? A: Yes!*, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD

Certain kinds of feedback, however, can inhibit creativity. Negative feedback based on the attainment of an unrealistic standard inhibits creativity; even the expectation of negative feedback can inhibit it.[86] Further, the more important the individual perceives the evaluation to be, the more likely the creativity of a highly-skilled person is likely to be inhibited.[87] Excessively critical evaluation also reinforces conformity with a norm, thus discouraging risk taking.

I was again interested in comparing my son's experience to the research. When I asked him if he was given challenging tasks, he said, "Yes," which is not surprising in a creative industry. I then asked what type of evaluation he received, and he asked what I meant. The concept of evaluation did not seem relevant to him. I asked if he received periodic evaluations. His response was that he did, but they did not mean much. He filled out his own evaluation form. When I asked how he knew if he was doing a good job, he said he that feedback was frequent and he could always ask for help if he needed it. He did not seem to have any fear of negative evaluation. Obviously, one cannot draw sweeping conclusions from a sample of one, but his company's actions were consistent with the research.

It is important for a school or firm to consider what type of evaluation it offers if it wishes to foster creativity. Does feedback for faculty consist of student evaluations, which may be measuring the quality of instruction or may be measuring whether the student liked or disliked the professor? Does it consist of one review a year for an untenured law professor or associate? Is it given in connection with a salary review that may feel more like a grade on a test than a desire to help improve one's abilities? Does the school or firm have a mentoring program? If it has a mentoring program, is it effective?

What is the reviewer's tone when giving feedback? Does he or she convey positive messages as well as areas for improvement? One should be conscious of the fact that many people when being reviewed only hear the negative comments. Thus, the tone and content of the evaluation should take into account the personality of the person being reviewed.

Some may think that this is coddling and lawyers should be tough. My reaction to this statement is to ask what is meant by the word "tough," and do all lawyers need to be the same? What if "tough" lawyers are not necessarily the most creative lawyers? According to

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VOICES, *supra* note 8, at 137.

86. Amabile, *supra* note 20, at 117; *see also* Amabile, *supra* note 83, at 192. Amabile has found, however, that this does not necessarily constrain the technical quality of work. *Id.*

87. In one study, Amabile found that "low-skill subjects were more creative under evaluative conditions, but high-skill subjects were more creative under non-evaluative conditions." Amabile, *supra* note 20, at 151.

the research, a highly critical evaluation process does not produce a self-confident person, which is essential for creativity.[88]

Obviously, the major extrinsic reward for law students is good grades in law school and at least a passing grade on the bar exam. I remember when taking a bar review course we were taught a mechanical approach to answering a question. I asked the instructor if he didn't think the examiners would be bored reading the same answer over and over. He said, "Boy, do you have the wrong attitude. This is not the time to be creative."

I am not sure why I remember that comment almost 30 years later. I am sure he was right, but the fact that he was right bothered me then and still does. I am not suggesting that grades should be entirely eliminated. But when it is necessary to give a grade, the professor should consider the quality of his or her feedback. I find it much easier to criticize when reviewing a student paper than to take the time to consider the positive aspects of the paper.

When I first started teaching, I thought I was doing my job by pointing out the things in the students' papers that needed to be improved. I was surprised when the students in the class had a very negative reaction to their critiques. I realized on reflection that by only mentioning the things that needed to be improved, I was implying their papers were terrible which they were not. Now I make much more of an effort to be balanced in my critique. I do not consider this coddling. I consider it an honest appraisal of their papers.

We also should question whether all classes need to be graded. It should be possible to have at least a couple of ungraded courses that focus on using non-analytical processes to generate creative ways in which to prevent and solve legal problems. Of course, there is always the risk that if a student has five graded courses and one ungraded course, homework in the ungraded course will not receive adequate attention. If the goal is developing creativity, however, a faculty member should be able to generate ways to overcome this problem. Also, who made a rule that all courses must have homework?[89]

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88. *See* Amabile, *supra* note 20, at 117; *see also* Amabile, *supra* note 83, at 192.

89. Amabile summarizes the traits of a school setting that encourage and inhibit creativity. She cites a study involving several hundred creative psychologists and scientists that evaluated what college teaching styles facilitated and inhibited creativity. Traits that facilitated creativity in order of importance were:

> (1) treated students as individuals; (2) encouraged students to be independent; (3) served as a model; (4) spent considerable amount of time with students outside of class; (5) indicated that excellence was expected and could be achieved; (6) enthusiastic; (7) accepted students as equals; (8) directly rewarded student's creative behavior or work; (9) interesting, dynamic lecturer; and (10) excellent on a one-to-one basis.

Amabile, *supra* note 20, at 208. Traits that inhibited creativity were: "(1) discouraged students (ideas, creativity, etc.); (2) was insecure (hypercritical, sarcastic); (3) lacked enthusi-

A concept closely related to evaluation is that of extrinsic rewards. If one wishes to create a nurturing environment, it is also necessary to evaluate the organization's system of rewards. One can be intrinsically motivated or extrinsically motivated to perform a particular task. An individual is intrinsically motivated if he or she is interested in or excited about his or her work. An individual is extrinsically motivated if he or she is doing the work for a promotion, salary increase, or for time off.[90] Obviously, a person can be both intrinsically and extrinsically motivated simultaneously, but one form of motivation is likely to predominate.

Research demonstrates a high correlation between creativity and intrinsic motivation.[91] While there have been differing opinions as to the impact of external factors on creativity, Amabile suggests that studies which have concluded that all extrinsic rewards undermine creativity paint with too broad a brush. One needs a more sophisticated analysis.[92]

Extrinsic factors, such as rewards for creative ideas and additional time to pursue creative interests, can increase creativity.[93] However, extrinsic rewards that make people feel controlled by others inhibit creativity.[94] For example, if a person knows what to do to get a raise and is more extrinsically than intrinsically motivated, he or she is likely to approach work less creatively.

In an academic workplace, one example of an extrinsic reward where one's behavior is controlled by others is the awarding of tenure. An obvious advantage of the tenure system is one cannot be fired for his opinion. A disadvantage is that the system can support mediocrity.[95]

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asm; (4) emphasized rote learning; (5) was dogmatic and rigid; (6) did not keep up with field; generally incompetent; (7) had narrow interests; and (8) not available outside the classroom." *Id.*

90. *See* Amabile, *supra* note 6, at 21; *see also* Mary Ann Collins & Teresa M. Amabile, *Motivation and Creativity, in* HANDBOOK OF CREATIVITY 297 (Robert J. Sternberg, ed., 1999).

91. *See* Amabile, *supra* note 6, at 21; *see also* Mary Ann Collins & Teresa M. Amabile, *Motivation and Creativity, in* HANDBOOK OF CREATIVITY 297 (Robert J. Sternberg, ed., 1999).

92. Beth A. Hennessey & Teresa M. Amabile, *Reward, Intrinsic Motivation, and Creativity, in* AM. PSYCHOL. 674 (1998).

93. Amabile, *supra* note 6, at 22.

94. Amabile, *supra* note 83, at 195.

95 JAMES, *supra* note 32, at 138 ("Tenure seems, in the 1990s, to support mediocrity—not independent thought. Consider, for example, the amount of learning that has already shifted from schools to employers, who bring in trainers, consultants, and teachers to improve workforce skills. Entrepreneurs are increasingly designing their own education. The availability of the best of universities through continuing education and the internet may force academics to change.").

In order to achieve tenure in a law school it is necessary, among other things, to publish. The major source for publications are law reviews. Law reviews are run by some of the brightest students at the schools. The students, however, are placed in an impossible situation. They must select articles that make a substantial contribution to a particular field of law even though they have little or no knowledge of the field.

The experience of a partner in a large D.C. law firm illustrates the problem. He was hired to follow a particular piece of hotly contested tax legislation. After attending all the hearings and being intimately familiar with the arguments on all sides of the issue, he wrote an article about the newly-enacted legislation and submitted it to a prestigious university with which he was affiliated. The students in charge of the law review rejected the article because they said it did not "sound legal enough." They wanted him to cite cases to make it sound legal. Of course, there were no cases interpreting the newly enacted legislation.

Another colleague's creativity was inhibited by the extrinsic reward of tenure. He is interested in the role bounded rationality plays in economics. Bounded rationality challenges the notion that human beings are capable of making totally rational economic decisions. At his previous school there were faculty members who did not approve of the theory. He knew he risked not getting tenure if he chose this field of research, so he did not.

Fortunately, the experience did not squelch his curiosity. I am confident he will make a significant contribution to this increasingly important field in the future. These may seem like extreme examples to non-academics. I am sure, however, that if law professors throughout the country were polled, the list of similar examples would be long.

Because I now am interested in the field of creative problem solving, instead of reading appellate decisions, I read books and articles in fields such as cognitive psychology, neuroscience, cultural anthropology and sociology, among others. The goal is to draw from these fields to help those in the profession think about approaches lawyers and clients can use for preventing and solving legal problems.

I would never have chosen this field as an untenured professor. I played it safe, writing about real property law, which does sound legal. A professor is most likely to obtain tenure by writing in an established legal field and not advancing too many positions with which the tenured faculty may disagree. I am not suggesting it is impossible to obtain tenure if one is highly creative. It is just safer to be a bit creative, but not too creative until one obtains tenure.

In a law firm, a similar example of an extrinsic reward that controls one's work is the awarding of partnership. Obviously, many fac-

tors determine whether one becomes a partner in a law firm. The number of hours an attorney bills, however, is often one of them.

I suspect most, if not all, associates in a law firm know the number of hours they must bill each year in order to be considered for partnership. There is little incentive to spend hours devising creative solutions to a client's problem if the client may not pay for those hours.

Associates are also safer if they always use an analytical approach to problem solving. Most of the time, an analytical approach serves both the attorney and client well. There are, however, a variety of non-analytical approaches, such as mind-mapping and role-playing which may produce more creative results in particular cases.[96] An associate who uses some of these approaches, however, risks being passed over for partnership because the techniques are "different" and most lawyers are not familiar with the techniques or their usefulness.

Obviously, there are lawyers who are highly creative in preventing and solving clients' problems. It may be safer, however, to wait until one is a partner to be highly creative, especially if one cannot bill for one's time.

As mentioned previously, not all extrinsic rewards inhibit creativity. Those rewards, such as being given time without an obligation to produce can enhance creativity. (Sabbaticals are discussed later in the this essay.)

E. Lateral Flow of Communication Within the Organization and Outside the Organization

Information not only needs to flow vertically, but it also needs to flow laterally within organizations, between organizations, and with those from other disciplines. Organizations with specialists who do not exchange ideas with people outside their specialties are less likely to produce creative ideas.[97]

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96. See sources cited supra note 49.

97. See Csikszentmihalyi & Sawyer, supra note 81, at 171. The most significant insights come from a thorough grounding in one's field combined with interaction with other fields:

> [T]here must be (a) thorough knowledge of one or more domains; (b) thorough immersion in a field that practices the domain; (c) attention on a problematic area of the domain; (d) idle time for incubation that allows insights to emerge; (e) the ability to recognize an insight as one that help resolve the problematic situation; [and] (f) evaluation and elaboration of the insight in ways that are valuable to the field or domain.

Id.; see also Nirmal K. Sethia, The Role of Collaboration in Creativity, in CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, supra note 8, at 100, 101; Ford, supra note 8, at 34; BRIGHTMAN, supra note 14, at 31.

We all see problems through our own lenses. Therefore, it is advantageous to have people with several different lenses evaluate a problem. For example, assume the city council violates minor provisions of an environmental law in denying a developer permission to build on his property. A land use lawyer may focus on getting permission to build and ignore the minor violation of the law. She may recommend that the developer amend his application to comply with the city's request.

A litigator may focus on the violation of the law and recommend that the developer file suit. A tax specialist may look at the financial picture of the developer and recommend against developing the property at this time for tax reasons.

A psychologist may focus on the emotional needs of the developer and the city council. He may recommend addressing the emotional needs of the relevant council members who, as a result, may change their votes. Each professional is likely to identify the problem from a slightly different perspective. The combined approaches of people with different specialties present more opportunities for creative solutions than any one approach would.

To some extent, law schools recognize the need for varied approaches. For example, a person who has both a law degree and a doctorate in another field is often more appealing in the hiring process than one with only a law degree. Some law schools also have people from other disciplines on their faculty.[98]

1. Internal Cross-Discipline Approach

Another way to encourage creativity is to encourage faculties with differing expertise to meet to discuss works in progress. Law schools could benefit by including people specializing in fields other than law, in these discussions.

Approaches for cross-discipline learning for students include offering courses referred to as "law and" courses. These courses teach law in combination with another discipline, such as economics or medicine. Historically, law professors who have some expertise in the other discipline, have taught these subjects.

This pattern is evolving toward courses taught by law professors, but the students work directly with people in other professions. For example, at California Western School of Law, Professor Linda Morton teaches a course entitled Problem Solving and Prevention in Health Care, in which students work with doctors, social workers, school administrators and others to find creative solutions to public

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98. Law schools at the University of Virginia, Stanford University, and the University of Michigan are just a few of the law schools that have had non-lawyers on their law faculties.

health problems. Professor Janet Weinstein co-teaches an interdisci-
plinary course with a professor of social work entitled Children and
Families: Problem Solving Through Interdiscipinary Collaboration.
This course has law students and graduate students in social work fo-
cus on problems affecting children and their families. This trend of
teaming law professors with those in other specializations is consistent
with the "team" approach in business.

James says that one can determine the management styles of the
future by looking at the childhood myths of the future leaders.[99]
When I was a child, one common childhood hero was the Lone
Ranger. James points out that those concepts surrounding the Lone
Ranger are powerful:

> Work alone, except for a trusted semiservant who has no real status. Do
> not tell people what you are doing. Disguise yourself. Have no personal
> life. Ride a flashy horse. Believe you are exceptional, a crusader. The
> ideal is of a strong, moral man bringing security to others and asking noth-
> ing in return except total control.[100]

It does not take a great leap of imagination to see a connection be-
tween this myth and the role of the lawyer when I started practicing.
Most of the profession was male. Those, at least in large firms, gave
up much of their personal life in exchange for high salaries; and al-
though the client's goals mattered, the lawyer expected to have control
over the case.

While this model still exists, another model has arisen—that of
the team. The emergence of the team was predictable if one consid-
ered the myths of the next generation. The heroes of the next genera-
tion included the Mighty Morphin Power Rangers. This is "a multi-
ethnic team of boys and girls who fight evil by transforming
themselves into cyborgs with incredible 'techie' powers."[101]

There are times when the Lone Ranger approach is best, and times
when the team approach is best.[102] One who is comfortable with both
approaches and knows which one is appropriate in the particular set-
ting is better able to satisfy the needs of his or her clients.

It would be worthwhile for schools and firms to identify the myths
and underlying assumptions in the workplace. For example, there

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99. JAMES, *supra* note 32, at 92.

100. *Id.* at 80.

101. *Id.* at 93.

102. Teams may be necessary where problems are particularly complicated and require a
variety of expertise. "The proliferation of multicultural teams is not the result of the latest fad
in management but of the complexity and the challenges of living and working together in an
increasingly interdependent world." JEANNE M. BRETT, NEGOTIATING GLOBALLY: HOW TO
NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURES 136 (2001).

may be unstated assumptions that those who work the most hours are the "best" attorneys or professors; that one who takes walks in the middle of the day is wasting time; that one cannot be promoted if one challenges the status quo; or that having a balanced life makes one a better attorney.

It may sound like I am suggesting what the correct myth and assumptions should be. I am not. It is up to the school or firm to identify the assumptions they wish to have as part of their culture. I do think, however, that few of us pay much attention to our underlying assumptions.

Further, in a rapidly changing environment, assumptions that worked in the past may no longer serve the institution.

2. *External Cross-Discipline Approach*

Encouraging faculty to participate in cross-discipline organizations in their field can also foster creativity. My field has been condominium and homeowner association law. The leading cross-discipline organization in this field is the Community Associations Institute (CAI).

CAI is a national organization comprised of over 16,000 members including developers, lenders, association managers, homeowners, attorneys, professors, and insurance professionals, among others.[103] Their common connection is that they all are involved with condominiums and homeowner associations.

The members not only have diverse specialties, they also have a variety of educational backgrounds, are at varying ages, and they come from all areas of the country. Because of the different perspectives these people bring to problems in the industry, I have been able to identify ways to prevent and solve problems in my field that never would have occurred to me had I not had the benefit of interacting with them.

Sabbaticals are another way to encourage expanding the breadth of one's experience and knowledge. At a meeting of associate deans in 1991, one dean was asked how he handled sabbaticals. He said that he did not give sabbaticals to faculty who were unproductive; however, he encouraged faculty members who were productive to spend their sabbaticals doing something unrelated to law.[104] He felt it prevented the productive members from burning out.

Based on creativity research, this was a wise dean. Having experiences outside of one's area of expertise can give one new insights

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103. Community Associations Institute, *About CAI, at* http://www.caionline.org/about/index.cfm (last visited Mar. 28, 2005).

104. My recollection of remarks at the Association of American Law Schools Workshop for Senior Administrators, Washington, D.C. (Feb. 28 - Mar. 1, 1991).

into one's work. Requiring professors to produce yet another tradi-tional law review article in their field while on sabbatical may be less likely to encourage creativity.

Law firms also encourage an exchange of diverse opinions. For example, some firms pay special attention to hiring people with back-grounds in non-legal disciplines. Some large firms also have informal gatherings of lawyers from a variety of specializations to discuss prob-lems from one specialty. Lawyers who are in small boutique firms or in solo practice can accomplish the same goal by getting together with lawyers from other firms that have both the same and different spe-cialties.

Some lawyers encourage a cross-flow of communication by join-ing multi-disciplinary organizations in their field. As mentioned pre-viously, CAI gave me a broader perspective. Lawyers who specialize in the field are also members of this organization.

A cross-disciplinary approach can also be used to find solutions to problems in school and law office management. When considering how to generate new clients, lawyers often talk to each other. It may be wiser to talk about generating new clients with people who have backgrounds in psychology or marketing.

Immediately, one may think one has to hire a consultant from these specialties. It may be possible, however, to have a continuous flow of communication with people in these professions where all ex-change information and do not expect payment. For example, lawyers and those in another profession, such as psychology, could get to-gether for lunch to discuss client generation. Lawyers may wish to know how to generate business with psychologists and psychologists may wish to know how to generate business with lawyers.

All those in the profession—faculty, students and lawyers—can take courses specifically designed to teach one to be more creative and look at problems from different perspectives. Lawyers already engage in continuing legal education in their areas of specialization; their training could be supplemented by courses in creativity. Everyone is creative to some extent, but everyone can be trained to be more crea-tive.[105]

Some firms also encourage sabbaticals. This may be difficult in a small firm, but even small firms should seriously consider the benefits of a sabbatical program before rejecting it. Sabbaticals can be a time of amazing growth and renewal.

Some firms encourage cross-discipline discussion by encouraging the lawyers to have interests outside of law and by giving them time to

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105. Epstein, *supra* note 26; *see also* Basadur, *supra* note 11, at 289.

develop these interests. Time can come in the form of sabbaticals for a few months or in smaller blocks of time.

In addition to producing more creative lawyers, firms that follow this approach may reap other benefits. In 2002-03, the member service project of the Young Lawyers Division of the American Bar Association was a written guide entitled, *Life in the Balance: Achieving Equilibrium in Professional and Personal Life*.[106] The introduction to the guide states that, "Unsurprisingly, almost half of surveyed lawyers feel that they do not have enough time for themselves or their families. Almost three-quarters of lawyers with children report difficulty balancing professional and personal demands."[107] A firm that recognizes new associates do not want to think about the law 24 hours a day seven days a week for their entire career is likely to attract a larger number of qualified applicants.

Initially, some firms may be reluctant to implement these measures for economic reasons. However, there are ways of reducing this pressure. For example, if designed appropriately, the cross-specialty meetings and creativity courses can qualify for continuing legal education credit.[108] The economic pressures may also be lessened if one remembers Florida's warning that businesses that do not adapt to a rapidly changing environment with creative responses are likely to wither in the long run. Refusing to invest the time in developing creativity is short-sighted.

F. Physical Arrangement

1. Flow of Communication

As discussed, the free flow of communication is necessary for creativity. The physical arrangement of the school or law firm plays a role in the flow of communication. It can inhibit the flow of communication because the physical arrangement can create a preoccupation

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106. American Bar Associations Young Lawyers Division Member Service Team, *Life in the Balance: Achieving Equilibrium in Professional and Personal Life* (2002-03), *available at* http://www.abanet.org/yld/publications.html.

107. *Id.* at 4.

108. An example of a course for which one may receive CLE credit is a course that was offered by the Center for Contemplative Mind in Society and the Spirit Rock Meditation Center in November of 2004 which brought lawyers, law professors, judges, law students, and mediators together to learn various meditative practices and consider questions about the connections between contemplative awareness, social justice, and law. *See* Spirit Rock Mediation Center, *Continuing Education Units, at* http://www.spiritrock.org. This type of program will not appeal to all lawyers. Before rejecting a course that is different, however, it might be valuable to ask oneself whether one will learn more by taking another course in one's field or by doing something that may be an entirely new experience.

with status and status symbols.[109] For example, a senior professor or partner is more likely to have a corner office.[110]

As mentioned previously, in Silicon Valley, creativity is prized. The office design reflects the emphasis on creativity. When I visited my son's office, I was surprised. I was first struck by the brightly colored walls and carpeting, then by the office layout. The offices consist of cubicles where people can stand up and communicate with those in other offices. Playful communication is embraced.

The employees are encouraged to decorate their cubicles any way they wish. One office was very neat with a perfectly placed vase of flowers; my son's, was messy with a baby gorilla hanging off the computer. There was one office located near the rest that had walls, but the walls were glass giving no visual privacy. The glass office is the boss's office, but anyone can use it if they want a private meeting space. The concept of corner offices with the most important people in those offices does not exist in this company.

There may be a reason for this design. A researcher at the Massachusetts Institute of Technology conducted a ten-year study in which he found:

> [T]he likelihood that any two people will communicate drops off dramatically as the distance between their desks increases: we are four times as likely to communicate with someone who sits six feet away from us as we are with someone who sits sixty feet away. And people seated more than seventy-five feet apart hardly talk at all.[111]

Thus, organizations that have offices on the perimeter of the floor with executives in the corner offices minimize the flow of communication.

If an organization wants to encourage interaction, it needs to create space where even people who do not normally interact can do so in a nonthreatening manner. Gladwell argues that organizations should put public spaces, where people tend to congregate, in the center of the office to encourage the maximum flow of communication.[112] Congregating around the water cooler in previous eras apparently served a useful function.

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109. *See* BRIGHTMAN, *supra* note 14, at 32; *see also* Amabile, *supra* note 70, at 1162.

110. At our school, office choice is based on seniority. So, the fact that I have a corner office with a view of the ocean does not mean I am one of the most important people on the faculty. It just means I have outlasted a lot of faculty.

111. Malcom Gladwell, *Designs for Working: Why Your Bosses Want to Turn Your New Office Into Greenwich Village*, THE NEW YORKER, Dec. 11, 2000, at 61 (citing a decade long study by Thomas J. Allen, a professor at M.I.T., concerning communications between engineers in research and development laboratories).

112. *Id.* at 61-62.

The Neurosciences Institute in San Diego, California, is designed and operates on the premise that the physical layout influences creativity. The offices are designed so that scientists with diverse specialties encounter each other when they leave their offices. There is a common dining room where they informally exchange ideas about each other's research. The result is a highly creative environment. For example, at lunch one day Ralph Greenspan, a geneticist who studies biological complexity in fruit flies, was asked by a colleague who was studying sleep habits in rats, if fruit flies sleep. Greenspan said that he had never thought about it, and this conversation triggered a new area of research for him.[113]

Offices in law schools and law firms need to be private, and law professors and partners probably will not be willing to give up their right to office location based on a seniority or influence. There are, however, physical changes that law schools and law firms can implement to encourage a flow of cross-communication.

Those law schools and law firms that do not have places for people who represent all aspects of the school or firm to congregate and exchange ideas should consider the advantages of creating such space. If a law school or legal office has a place where people could naturally congregate, like a coffee room, but it is under-utilized, it would be worthwhile to find out the reason for the under-utilization. Perhaps the organizational culture directly or indirectly communicates that one should always be busy; one is wasting time if one is talking in the coffee room. Alternatively, maybe something as simple as making the space more inviting or providing free snacks may make more people use the space and exchange ideas. Obviously, once again, resources are an issue. The trade-off though may be more contented and creative employees.

2. Size

Karl Albrecht, a specialist in business organizations, writes about killing creativity in an organization. He concludes that the size of a company matters.[114] He finds that in small companies "there is more tolerance of mavericks with energy and ideas."[115] Further, there is less bureaucracy and less of a concern with doing things correctly.[116] In a large company, however, there may be more resources, which are

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113. Audio Compact Disc: Conference at the Neurosciences Institute, talk presented by Ralph Greenspan, *Time Flies Like an Arrow, but Fruit Flies Like a Banana* (Feb. 28, 2001) (on file with the California Western School of Law Library).

114. ALBRECHT & ALBRECHT, *supra* note 11, at 17.

115. *Id.* at 17.

116. *Id.*

necessary for creativity. Thus, size creates both advantages and dis-advantages. This can be seen in universities and their law schools.

Law schools that are a part of a university have the advantage of easy access to people in other fields. Whether professors take advantage of this opportunity is a different issue.

Free standing, independent schools like California Western School of Law, also have advantages. There is little bureaucracy so it is easy to experiment in cutting-edge fields and have the library purchase the necessary resources to support that field.

I have worked in both a large law firm and in sole practice. Again, there are advantages in both. In sole practice, I had less of a need to pay attention to billable hours. I could explore an interesting topic or argument even if I could not bill for it because I did not have to answer to anyone. In the large firm, however, I had access to greater resources.

I have not read anything that tries to state an optimum size for a firm or school. It is important, however, for those in a school or firm to think about the following questions: Does the current size serve the school's or firm's goals? If creativity were valued, would a smaller or larger size encourage creativity? Is there too much bureaucracy, and can it be reduced even if the size stays the same?

3. Appearance

Even if the size stays the same, changing the physical environment can encourage creativity. It can reduce dullness of perception that often serves as a barrier to creativity.

For example, have you ever driven to work and not noticed anything along the way? "It has in fact been demonstrated . . . that incoming information that corresponds with existing expectations is not mentally arousing."[117] When our environment becomes familiar we stop noticing it.[118] The brain, however, does pay attention when things in the environment are novel or unusual.[119] This is one of the advantages of travel. It puts people in unfamiliar environments forcing them to be conscious of what is going on around them.

A simple way to increase the mental sharpness needed for creativity is to make changes to the physical environment. For example, adding or subtracting flowers or sculptures, moving furniture around, and changing the pictures on the walls are simple ways to force people to

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117. R. OCHSE, BEFORE THE GATES OF EXCELLENCE: THE DETERMINANTS OF CREATIVE GENIUS 190 (1990).

118. BENNETT-GOLEMAN, *supra* note 27, at 39.

119. *Id.*; *see also* Epstein, *supra* note 26.

be conscious. It may be an annoyance to some, but at least they are alert enough to be annoyed.

G. *Diversity of Appearance and Opinion*

Creative people actively seek diverse places.[120] When one hears the word "diversity" in connection with law schools or law firms, one is likely to think first of race or ethnic background. Diversity, however, also includes gender, sexual preference, age, educational background, work experience, professional discipline, appearance, and political opinion among others.[121]

There are at least two practical reasons for fostering diversity. First, it is a way to attract creative students and lawyers. According to Florida, creative individuals are seeking many types of diversity. For example, people he has identified as the creative class are likely to ask in job interviews if the company offers same-sex partner benefits.[122] They ask not because they are gay, but to find out if the company is open to differences.[123]

I mentioned previously that we each identify a "problem" through our own lens. Thus, a tax lawyer may view a problem differently than a psychologist. We also each look through our own set of cultural lenses. For example, some of the lenses I look through include: (1) female; (2) law professor; (3) living in southern California; (4) from a closely knit family; (5) who has traveled both within and outside the U.S. and has an interest in other cultures.

Creative solutions are more likely to arise when a problem is viewed through a variety of different cultural lenses. For example, according to Richard Nesbitt,

> Westerners have a strong interest in categorization, which helps them to know what rules to apply to the objects in question[.] . . . East Asians, in contrast, attend to objects in their broad context. The world seems more complex to Asians than to Westerners, and understanding events always requires consideration of a host of factors that operate in relation to one another in no simple, deterministic way.[124]

The combination of categorization and viewing the problem in a complex context is likely to generate more potential solutions than

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120. FLORIDA, *supra* note 10, at 79.

121. *See* Francis J. Milliken & Luis L. Martins, *Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups*, 21 ACAD. MGMT REV. 402, 403-04 (1996).

122. FLORIDA, *supra* note 10, at 79.

123. *Id.*

124. RICHARD NISBETT, THE GEOGRAPHY OF THOUGHT: HOW ASIANS AND WESTERNERS THINK DIFFERENTLY . . . AND WHY xvi (2003).

simply using one approach. Other cultural differences that can help generate a variety of potential solutions or more comprehensive solutions include different approaches to the concepts of time, truth, and conflict.[125]

Law schools have made an effort to have culturally diverse student bodies.[126] Culturally diverse students are often students from different cultural backgrounds who were born and educated in the U.S. While there is an advantage in having American students who have culturally diverse backgrounds, there may be even more advantage in having students from other countries in classes with U.S. students. It expands the perceptions of both the students and the teacher. Some law schools achieve this by offering programs for lawyers from foreign countries.[127]

Cultural diversity became apparent in a course I recently taught called an "Introduction to Creative Problem Solving." The course was taught in two 75-minute segments.

In the first 75-minute segment I presented the students with an intentionally abbreviated fact pattern that involved an owner in a condominium who had not paid assessments and did not know a lien could be recorded. The owner had an upsetting encounter with the association manager who had recorded a lien on the property. The manager raised an arm toward the owner who then fell and was injured. The goal of the class is to have the students realize we all bring hidden assumptions to the table when we try to identify problems.

The hidden assumptions were interesting. First, all the students assumed both parties were male. Some assumed there had been an assault and battery even though they did not know why the owner fell after the manager raised his arm.

The cultural biases were also interesting. The class consisted of 65 students and including students from Russia, Korea, Iran and Nigeria. The students from Korea saw the problem in relational terms— the relationships between the owner and manager, the owner and other owners and the manager and owners. This approach is consistent with

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125. *See generally* LeBaron, Bridging Cultural Conflicts: Conflict Resolution from the Heart, *supra* note 49; Fons Trompenaars & Charles Hampden-Turner, Riding the Waves of Culture: Understanding Diversity in Global Business (1998); Richard D. Lewis, When Cultures Collide: Managing Successfully Across Cultures (2nd ed. 1999); Geert Hofstede, Cultures and Organizations: Software for the Mind (1997); Clifford Geertz, The Interpretation of Cultures (2000). For an excellent discussion of the tragic consequences of a failure of cross-cultural understanding in medicine, see Anne Fadiman, The Spirit Catches You and You Fall Down (1997). This book won the National Book Critics Circle Award.

126. *See* Grutter v. Bollinger, 539 U.S. 306, 325 (2003) (recognizing the importance of a diverse student body as a compelling state interest).

127. California Western offers a Master of Comparative Law/LL.M. program.

their culture, which is far more likely to focus on relationships than on rules. The combination of the Western and Eastern approaches permitted the students to identify more of their hidden assumptions and to end up with a much more complete identification of the problem.

The cultural diversity was also beneficial in the second 75-minute segment. In this class I presented the students with a much more complete explanation of the facts. They used non-analytical problem solving techniques for twenty minutes to identify novel and useful ways to solve the immediate problem and prevent it from happening in the future. The non-analytical methods included random word analysis (choosing a word and continuing to write the first word that comes to mind), mind-mapping (beginning with a word and drawing spokes or squiggles from the word that each contain another word, words, phrase, or picture), and role-playing (imagining the problem from another person's perspective, such as a family member or someone from another profession.) As one can imagine, the responses of the foreign students were different from the Americans, particularly when using the word association techniques.

I have specialized in the condominium field for over 20 years. The number of creative and useful responses these students produced was greater than some of those produced by specialists in the field. Many of the suggested solutions also would have produced a greater sense of community than generally occurs when a lien is recorded and foreclosed.[128]

When I taught this same class to a group of foreign lawyers, not surprisingly, the cultural differences were even more pronounced. I altered the facts and made the association manager and owner cousins. The Mexican lawyers said that one does not use these kinds of enforcement techniques against a family member. When I suggested that all the owners had to pay assessments in order for the association to have enough money to fix the common areas, I was again told that one does not do this to family members. Condominiums in Mexico obviously need to be repaired, so they must use a different approach for solving the problem of assessment collection. Unfortunately, I did not have time to discover what that approach is.

Another form of diversity is diversity of appearance. While the dress code among law students has been casual for as long as I can remember, body piercing, wild colored hair, and unusually scanty dress is a fairly recent phenomenon. Although I have trouble convers-

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128. I tried a similar exercise later in the semester using the material we were covering in the Property Law I class. The students' responses, in general, tended to be more legal and less creative. I hope this is too small a sample to draw any conclusions. I fear training students to "think like lawyers" using the analytical method may only be training them to be less creative in general.

ing with a student with a tongue ring—I keep wondering if it hurts—tolerating a variety of appearances encourages creativity.

The dress code in law firms is also changing. When I started practicing in San Diego in 1975, casual dress was not acceptable. At that same time a friend in a large Chicago firm took off her shoes late at night while doing research in the library and received a very disparaging anonymous note about the incident the next day.

Some time ago the term "business casual" entered the vernacular and today there are casual days in many firms. Some attorneys always dress casually, keeping a suit at the office in case they have to go to court or make a special appearance with a client. I do not know if these firms are ready for body piercings and tattoos, however.

The dress code in some firms, even in large law firms, is evolving to no dress code. Florida comments: "Perhaps the only significant dividing line this code has created is the line between organizations that allow this diversity to flourish and those that try to stifle it. The latter run the risk of losing competitiveness, because they restrict the pool of creative talent from which they can draw."[129]

It is important to point out that not all firms want to project a creative image. For example, some firms may lose clients if their lawyers have visible tattoos or body piercings. Again, the goal is to be reflective. Law firms should think about what kind of image they want to project and how important flexibility is. If the goal is to attract creative young lawyers, it may be easier to do so if the dress code is flexible.[130]

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129. FLORIDA, *supra* note 10, at 120.

130. Characteristics in a business environment that resulted in projects that were considered highly creative were as follows:

> (a) organizational encouragement and support for creativity . . . and encouragement to take risks; (b) supervisory encouragement, which combines clear overall goal-setting with openness to new ideas; (c) work group supports, which stem from open, trusting communication within a challenging, committed group of skilled co-workers; (d) sufficient resources, including facilities, money and information; (e) challenging work that is perceived as important; and (f) freedom in deciding how to do one's work. The low-creativity projects were higher on: (a) organizational impediments to creativity, including political problems, excessive criticism of new ideas, destructive competition, and an emphasis on maintaining the status quo; and (b) workload pressure—having too much to do in too little time.

TERESA M. AMABILE, *Discovering the Unknowable, Managing the Unmanageable, in* CREATIVE ACTION IN ORGANIZATIONS: IVORY TOWER VISIONS & REAL WORLD VOICES, *supra* note 8, at 79-80. "[C]reativity can be encouraged within work groups through autonomy in the work, encouragement of creativity, mutual openness to ideas, constructive challenge to new ideas, and shared goals and commitments," and a moderate level of task conflict on teams will aid creativity. Terri R. Kurtzberg & Teresa M. Amabile, *From Guildford to Creative Synergy: Opening the Black Box of Team-Level Creativity*, 13 CREATIVITY RES. J. 285, 287, 291 (2000-01).

Firms and law schools that tolerate and perhaps even encourage diversity of appearance may not always encourage diversity of political opinion. An article in *The Economist* entitled *America's Left Dominated Universities: If You Loathe Political Debate, Join The Faculty Of An American University*, identifies ways in which universities value diversity except when it comes to diversity of political opinion; universities are politically liberal. It states, "Students hear only one side of the story on everything from abortion (good) to the rise of the West (bad)."[131] This bias may be reversed in some large corporate law firms where the bias is conservative.

If one wishes a creative environment it is important to recognize the bias and make an effort to hear from those with opinions that challenge the opinions generally held. I have found that I can usually learn more about political issues from my colleagues who are politically conservative than from those who share my biases.

III. CONCLUSION

As I mentioned in the introduction, my goal is not to present the definitive work on barriers to creativity. Instead, it is to further a discussion of organizational barriers to creativity in law schools and the legal profession. Some may choose to reduce the barriers for practical reasons; with the changes in the legal environment, one may need to become more creative to survive.

There are other reasons, however, for reducing the barriers. I have found teaching and practice can be more fun if one is not confined by narrow approaches to solving problems.

When our law school built an administration building, it had to be built on the lot line to make it economically feasible; thus, it was necessary to obtain easements from the two adjoining property owners. One property was owned by a lawyer and it was necessary to obtain the easement through traditional negotiations. We obtained the easement at a reasonable price, so our goal was accomplished.

The second property was owned by an order of nuns and operated as a residence for lower-income, single, working women. The nuns were lovely people, but it immediately became apparent that they did not want to grant an easement.

After spending some time with them, my colleague and I discovered they were concerned that the women's privacy would be invaded by the workmen looking into the women's bedroom windows. I asked to look at the rooms and was saddened to see that the conditions were

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131. Lexington, *America's Left Dominated Universities: If You Loathe Political Debate, Join the Faculty of an American University*, THE ECONOMIST, Dec. 2, 2004, at 36, *available at* http://www.economist.com/world/na/displayStory.cfm?story_id=3446265 (last visited Mar. 28, 2005).

depressing. The curtains on the windows were falling apart which is the reason they did not provide sufficient privacy.

In exchange for the easements, the school provided mini-blinds, of the nun's choosing, for all the bedroom windows and designed the open areas of our building so that the view would be as pleasing as possible from the bedroom windows. The school also arranged to have furniture donated to the residential facility at no cost to the school.

This approach solved the school's problem for a very small sum of money. It also established a sense of community, which prevented problems arising in the future. And I felt great.[132]

If feeling better about one's practice is not a good enough incentive to reduce the barriers to creativity, maybe the comments of John Ratey, a physician and professor of psychiatry at Harvard, will be persuasive: "Every time we choose to solve a problem creatively, or think about something in a new way, we reshape the physical connections in our brain."[133] "If you do not exercise brain circuits, the connections will not be adaptive and will slowly weaken and could be lost."[134] Thinking creatively is not just necessary for teaching and practice, it is necessary for life.

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132. For those of you who are dissatisfied with practice or teaching, I recommend STEVEN KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE (2002).

133. JOHN J. RATEY, M.D., A USER'S GUIDE TO THE BRAIN: PERCEPTION, ATTENTION, AND THE FOUR THEATERS OF THE BRAIN 364 (2001).

134. *Id.* at 31.