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## Symposium: Creative Problem Solving Conference – Conference Transcript Excerpt – Session 2: Training the Creative Problem Solver

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## SESSION 2: TRAINING THE CREATIVE PROBLEM SOLVER

[EXCERPTS]

### I. PLENARY SESSION TWO: TRAINING THE CREATIVE PROBLEM SOLVER

MS. MORTON: Welcome to our second plenary session on training the creative problem-solver. I'm excited to be up here as a moderator for a few different reasons. We have an esteemed set of panelists here who are going to talk to you about what I think in many ways is the heart of the issues. How do we teach? How do we train? How do we educate the creative problem-solver?

I'm also excited to be up here because, as an educator myself, as someone who has made some fledgling attempts to teach creative problem-solving, some successful and maybe some not so successful, I'm particularly anxious to hear from our set of panelists this afternoon. We have to my far left, Dean Emeritus Paul Brest, who served as a law clerk to Supreme Court Justice John M. Harlan, and then practiced with the NAACP Legal Defense and Educational Fund in Jackson, Mississippi, where he did civil rights litigation. He joined the Stanford law faculty in 1969 and served as dean there from 1987 to 1999. While on the faculty, he co-taught a course with Professor Linda Krieger, who is also here today, on problem-solving and decision making. He also teaches in the area of constitutional law and is co-author of the book, *Processes of Constitutional Decision Making*.

Next, we have Professor Deborah Rhode, who has recently been profiled in the *National Law Journal* as one of the country's fifty most influential lawyers. She's currently the director of the Keck (ph) Center on Legal Ethics and the Legal Profession at Stanford. In 1998, she was president of the AALS and senior counsel to the minority members of the Judiciary Committee of the U.S. House of Representatives, which was working on impeachment issues. She's recently received two awards. In 1999, the ABA presented her with a WM Keck Foundation award for distinguished scholarship, and a pro bono publico award for her work expanding public service opportunities in law schools. I could go on and on, but I do want to add that, in her spare time, Professor Rhode has co-authored eight books and more than 75 articles.

Finally, we have Professor Linda Krieger, who practiced for thirteen years in the field of employment discrimination. In 1990, she joined the faculty of law at Stanford where she co-taught the course on problem-solving and decision making with Dean Emeritus Paul Brest. While there, she received the award for excellence in teaching. She joined the faculty at Boalt Hall in 1996 where she has continued to teach the course in problem-solving and decision making, as well as teaching the fields of employment law and social cognition. Her numerous publications include an excellent article which I'd highly recommend, co-authored with Dean Emeritus Paul Brest, entitled "On Teaching Professional Judgment."

Now, let's welcome our first speaker, Dean Emeritus Paul Brest.

DEAN BREST: As somebody who, as a professor and as a dean, has taught and encouraged the development of courses in lawyering skills, courses in areas such as problem-solving, counseling, planning and negotiation, I'd like to express some skepticism about the future of law school curriculum in these subjects.

Let me begin by describing a typical situation. A client with a problem comes to a lawyer rather than a psychologist or accountant because he perceives that his or her problem has a legal dimension. But, very few real world problems conform to the boundaries that separate different disciplines, and it is a rare client who wants his lawyer to confine herself to the law. Rather, what the client hopes is that the lawyer will integrate legal considerations with the other aspects of the problem. Solutions are often constrained or facilitated by the law, but finding the best solution, a solution that addresses all of the client's needs, usually requires more than technical legal skill.

At their best, lawyers are society's general problem-solvers, skilled in avoiding as well as resolving disputes, and facilitating private and public ordering. They help clients solve problems flexibly and economically, without restricting themselves to the cramped decision frames that so-called legal thinking tends to impose on a client's situation. Good lawyering brings more to bear on the problem than legal knowledge and lawyering skills. Good lawyering entails creativity, common sense, practical wisdom and, that most precious of all commodities, good judgment.

How could law schools teach these skills, attitudes, or if you like, virtues? The staple of the law school curriculum is the analysis of appellate cases, which focuses on problem-solving in an essential legal domain, and arguably provides the foundations for problem-solving more broadly. But, most of a student's, indeed, most of a lawyer's workday is not spent dealing with appellate cases, and if law schools can help students develop a broader array of problem-solving skills, it's through courses that are concerned with other core aspects of lawyering, such as counseling and planning and negotiation.

Some of this can be done through classroom courses, though I think they require different sorts of materials and different sorts of teaching than

the traditional case-oriented courses. The readings come from economics and statistics, cognitive and social psychology, business management, and I think these courses are most effectively taught through writing exercises and simulations and situational case studies. The situational case studies I advocate are those traditionally taught in business schools where the student is given a problem as a client might present the problem, and the student then faces the challenge of analyzing the problem, identifying it, and proposing solutions to the problem.

So one can do something in classroom courses, but in my view, the most effective way of developing some skills—and I'm thinking particularly of counseling and planning and negotiation—is through simulated or live client clinical exercises where students are called upon to identify their clients and other parties' interests and to engage in problem-solving both individually and collaboratively.

Unfortunately, this is the source of my main skepticism. I doubt whether, given the current political economy of legal education, courses in lawyering skills and their instructors will be treated as full-fledged members of the law school curriculum and faculty and accorded the respect given their more academic counterparts.

The root of the matter lies in the modern law school's position in the university, which for the most part subordinates the teaching skills to purely intellectual endeavors. This is hardly unique to legal education. Compare the academic status of courses and instructors in the creative and performing arts to their counterparts, say, in art history and music theory. But, while most undergraduates do not expect to be professional artists and performers, most law students do plan to become practicing lawyers.

As a practical matter, the requirement that tenured faculty—the ones that effectively control academic institutions—engage in significant scholarship excludes instructors in skills from their ranks. The demands of scholarship and the demands of the intensive kind of teaching that goes into either simulated or live client work are, if not incompatible, at least in significant tension with each other.

The motivations for entering the academy tend to differ as well, with one group being primarily interested in scholarship and the other in teaching. The increased heterodoxy of the law professorate, though I think it's an unequivocal improvement in modern legal education, has not reduced this gap. Indeed, although clinical legal education originated in some of the same progressive forces that produced the various critical and cultural approaches to contemporary scholarship, progressive scholars tend to share more common ground with their mainstream and conservative academic colleagues than with most clinicians. One consequence of this structural or political arrangement is that students' exposures to lawyering skills tends to be haphazard, certainly when compared to their introduction to basic legal doctrine and analysis.

Another consequence is the foregone opportunity to integrate theoretical

and applied teaching. Because of the highly practical orientation, and sometimes, not always, anti-theoretical orientation of many clinical instructors, insights from economics and game theory and cognitive psychology that plausibly bear on the actual practice of problem-solving, are at most superficially alluded to in clinical courses such as negotiation or counseling. Furthermore, because many non-clinical faculty members are pedagogically conservative and shy away from anything approaching experiential learning, students in more traditional classes seldom have the opportunity to apply theoretical work to practical problems of lawyering.

However, the most serious downside of this arrangement is that clinical offerings and lawyering skills exist at the sufferance of their more academic counterparts. Because their small faculty-student ratios renders them more expensive than conventional classroom courses, clinical courses are likely to catch the dean's eye and red pen when budgets are tight.

I doubt that the organization of American law schools is about to change absent a major disruption of the economy of law practice, and I do not wish for that, for a number of reasons, but especially because I think the law school's full citizenship in the modern research university is a valuable accomplishment and one I would not like to see rolled back.

The status quo, however, comes at a cost. Few law schools, and especially few of the nation's elite law schools, which exert disproportionate impact on other institutions, are likely to integrate lawyering skills into the mainstream curriculum.

Even if you agree with this analysis, you may be skeptical about how great a loss it implies. After all, there is no solid evidence, even insubstantial evidence, indicating that law students who've had an education in lawyering skills become better lawyers than those who have not. Even if some clinical experience allows graduates to hit the ground running, the difference between those who have had and have not had clinical learning opportunities may quickly diminish in the early years, perhaps even the early months of practice.

Like most teaching situations where one is hoping for results in the education process, the consequences of teaching lawyering skills are largely a matter of intuition. My own intuition is that the systematic integration of lawyering skills into the mainstream curriculum can make a difference. It can foster valuable professional attitudes as well as competencies. If I were still a law school dean, I would continue to try to move my institution toward giving lawyering skills a significant and secure place in the curriculum. As it is, I watch the American law school scene with great interest, but not with bated breath. Thank you.

MS. MORTON: Thank you. Next, Professor Rhode from Stanford University Law School.

PROFESSOR RHODE: As a war-weary survivor of long-standing struggles to integrate professional ethics issues into the curriculum, I think there are some obvious parallels and lessons that can be drawn from that ex-

perience that I want to briefly address today. And while I share some of Paul's realism about what the prospects for change are, I'm only going to drizzle on the parade, because I do think that the history of the integrated method of pervasive ethics and so forth has been, if not a qualified success, at least not a complete failure. I think there are some opportunities before us that suggest the end result might be—even if we can't or have not yet begun to quantify its absolute effects in the world out there—nonetheless pushing us in the right direction.

To sort of follow the methodology which I think is akin to today's conference, I want to first identify the problem, or as we in the business like to say, the challenges confronting us, and then address some strategies for trying to make a difference in this area. And I'll be brief about the problem simply because I think I'm preaching to the converted here. I think legal education does a very poor job of integrating problem-solving skills into the curriculum.

We socialize students to compete not collaborate. We offer relatively little training and alternative dispute resolution. We enshrine the adversary system and client loyalty at the expense of broader societal interest, and we provide relatively few occasions for systematic reflection about the price of partisanship for real people, with real problems, and real resource constraints. And in fact, these real people rarely figure into the legal education.

The dominant texts are, of course, case books, which are generally just that, books of cases. Relatively little effort in most of them is spent to explain the factual circumstances and the ultimate consequences for litigants. The level of abstraction in most classrooms is, I think, both too theoretical and not theoretical enough, and neither provides the interdisciplinary foundations necessary for good problem-solving in the areas that Paul has just mentioned, such as social psychology, organization behavior, and decision making theory. Nor does it offer a lot of practical assistance in how to use that doctrine in particular cases.

In effect, students often get what my colleague, Lawrence Friedman, has called the legal analogy of "geology without the rocks": dry, shallow logic, divorced from society, and what's missing is the context necessary to understand how law interacts with life.

Also absent is any sustained effort to address the emotional and interpersonal dimensions of legal practice. Thinking like a lawyer, typically presented, is the functional equivalent of thinking like a law professor, that is, rational, distant, detached. And the affective dimensions of lawyering are largely relegated to clinical courses, which as Paul has noted, are still treated as poor relations in most academic communities.

It's thinking about thinking or theory, as we prefer to call it, that brings the greatest professional rewards. And prestige and scholarship often seems inversely related to relevance for practice, just as prestige and lawyering too often appears inversely related to individual client services.

And so, without adequate resources, status or class hours, a lot of clini-

cal education barely begins to compete for the neglected practical and empathic skills throughout the standard curriculum. In short, legal education teaches too little about dealing with people with real problems, with people who are different in situations of stress. The cost of that neglect is borne by those least able to absorb it. Many problems for which individuals seek assistance, as Paul has noted, are not primarily legal problems; they're deep human problems in which the law is enmeshed. And if we train lawyers only to respond to the legal issues, they're going to end up talking past the concerns that are most central to many clients.

Faculty who are steeped in the case analysis and adversarial ethos, who are trained to see clinical legal education as plumbing rather than grand theory, who are wary of venturing into an area outside of their expertise and who see none of these materials treated in the standard teaching case books and course materials, are going to have some obvious disincentives to do what really needs to be done. I think too often a mindset is: "If it were really important, it would be here in the course materials, and since it's not here, it can't be really important."

Well, what is to be done to reverse the incentive structures? I think we need to make some changes both on the demand and the supply side. First of all, on the demand side, the legal academy needs more wake-up calls from the profession, and I think the fact that there's co-sponsorship in a meeting like this of the ABA and of law schools is the kind of step in the right direction, one that has to happen.

As an example of the demand for problem-solving skills, consider Bryant Garth's wonderful article, in which he looks at surveys of practitioners, and compiles what he calls a "misery index" based on what it is that people think that they could have learned in law school versus how well they thought their own law schools did the teaching. The results will not surprise you. It's in areas like problem-solving and skills training that legal education is most faulted.

I think those folks out there in the practice need to send more consistent and systematic signals, both to the academy and its product, the students. If employers began demanding that students have access to these courses; if they began to look at it when they're evaluating applicants; if more employers did what Janet Reno has done in the Department of Justice, which is implemented remedial courses; if legal practitioners demanded it as a part of continuing legal education training, then I think you would start to see the message filtering up.

On the supply side, I believe deans can do more, even with their limited resources, by first of all identifying what's being done in their own curriculum, and trying to figure out some incentives for what could be done better. They can ask who does it, and how often it happens. They need actually to look at the materials of people who say that they're covering these sorts of skills, and then provide some modest incentives for people who are willing to do it better, perhaps a curriculum grant, research assistance, or summer

stipends. Small bribery seems to be highly effective, and it was amazing how many of my colleagues who had resisted the intrusion of ethical issues, somehow when they were granted small summer grants to improve their courses or just borrow from somebody else who had the materials available, managed to find this an extremely valuable additional increment to their course supplements.

And of course, you know, just getting the materials into the coursework is only partway there. You also have to test on it. I've written a book on teaching ethics by the Pervasive Method, and it came out of the experience at Stanford of finding that colleagues wouldn't do it unless you handed it to them in, you know, packaged form.

So, I think annotated bibliographies, and making the resources available, but then working up the modules and showing how they fit in a standard course, is one way to integrate problem-solving materials into the law school curriculum. I also think, and I'll end with this final thought about the parallels with professional ethics, that you need both the sustained coverage that you get from a single class like the one Paul teaches in decision making or problem-solving, and you need also the Pervasive Method. You need to have the same messages reinforced throughout the curriculum. The problems arise in all areas of the substantive curriculum, and to marginalize the significance by putting it in one course, I think, really minimizes the values that we can provide.

I think problem-solving belongs in the standard ethics courses. It should be an integral part, and partly because those courses too often reinforce the adversarial mindset that's conveyed through much of the rest of legal education. I always start my professional ethics course with a case study which involves a contested custody case arising out of a real case involving legal services practice. It has every conceivable kind of ethics issues built into it, conflicts of interest, problems of the adversarial system and so forth, but it also asks some broader questions about what lawyers could have done as problem-solvers that they didn't do, and the questions they didn't ask when they went immediately into the advocate's role.

I think it's possible to put those sorts of modules into the standard curriculum in a much more systematic way, and just as ethics needs to be part of the professional responsibility course, professional responsibility also needs to be part of the problem-solving course.

I'll end with one example that I think was fairly critical in my own thinking about these issues, the exercise in problem-solving that Ed Dauer forced upon me as a first-year law student in a small groups contract class. Ed had the radical notion—it was extremely radical, I should report, at Yale in those days—that in a contracts course, you might actually expose some students to a contract. Even worse, to a contract drafting exercise. And so we did, and I can remember still, after twenty years, the vivid details of that exercise. We had to draft a requirements contract for a swimming pool manufacturer who was supplying customers, and you know, most of us hadn't a

clue what a real contract was, let alone a requirements contract. It didn't occur to us there might be form books out there that actually had examples of these things. And so, most of us, I think, just recreated them from the wheel, and we had to actually draft it and then negotiate it with someone else in the class.

I had, depending on your point of view, the good fortune or the misfortune to have as a partner somebody who had been around the block a few times in the real world. She didn't draft hers by definition, but rather just took her Macy's charge card contract, which is a classic contract of adhesion, changed a few clauses and presented it to me as a take-it-or-leave-it proposition. Not having had any training or skills in negotiations, as well as contracts, and not yet having encountered the unconscionable contract yet in the course materials, I was totally clueless at how to respond to this.

Well, it was a wonderful exercise that taught me things about lawyering skills, about ethics, about real world circumstances, and how one might go about trying to find the resources one would need to cope with a situation like that. I have always sort of hoped at some point I would go back into contract teaching where I started so that I could take that exercise and exact similar vengeance on my own students, only I would hope with the benefit of twenty years of literature and teaching techniques in the theory, some additional sense of how to get them the tools to deal with this exercise. As it was, it was a wonderful experience that I've held onto, and it's informed my own sense that it's really critical to bring these kinds of exercises and these sorts of educational opportunities into the mainstream curriculum. So, I applaud you in all of your efforts to do that.

MS. MORTON: Thank you. And now Linda Krieger, Professor from Boalt Hall.

PROFESSOR KRIEGER: I've been asked to say something about the relationship between the teaching of substantive law courses and the project of encouraging and training law students to become creative problem-solvers. Now, I'm going to do that, but I'm going to do it in what might seem like a roundabout way, by taking a close look at some of the terms and concepts that we've been throwing around here over the past couple of days.

The first thing I want to hone in on is, what exactly do we mean when we use the term "problem-solving"? It's very easy to say this, but what does it really mean? Or more fundamentally, what does it mean for something to be a problem? What is a problem and what is the relationship between a problem or problem-solving and a decision or decision making?

Second, what do we mean by substantive legal expertise? What is legal expertise, and how does legal expertise figure for better or for worse sometimes into the process of solving a problem?

And then, finally, what might it mean for problem-solving to be creative as opposed to something else? In this regard, I think it's important to recognize that we come to this enterprise with a fair amount of professional baggage. I remember very vividly when I was practicing law, doing an oral ar-

gument on a demurrer in a case I was arguing involving the mass layoff of about 1,300 production workers from the Atari Company back in the early 80's, and after I finished my presentation, my opposing counsel gets up and says, "Your Honor, my esteemed colleague's argument was creative." This was not a compliment, right? Having your argument called creative is something of a subtle or not so subtle chop.

Now, it's sort of like creative accounting, right? Creativity, depending on the context, may not be such a good thing. Few of us, I suggest, would really want to find ourselves on the receiving end of the scalpel of a creative surgeon, right? So, although we may posit that creativity is good, it's good in its proper place. So, what is the proper place of creativity in the enterprise of legal problem-solving?

I want to start with the definition of a problem that I've taken from an article that Paul and I wrote last fall that soon will appear in an article in the *Temple Law Review*.

I would suggest that we have a problem when the present—any present state of affairs—diverges, or in the future can be expected to diverge, from a desired state of affairs, and there is no obvious way of getting from the present state to the desired state.

Now, there are really two things to do in response to such a situation. One is to bring the world into closer conformity with one's desires. Of course, the other way to deal with it is to change your desires so that your desires better match the existing state of affairs in the world, and that perhaps is when you send your client to a psychologist or a rabbi or a minister or some other person. We don't usually think of lawyers as people who tell their clients, "Just get used to it."

So, we've got a present state that varies from a desired state, and we can think of this space in the middle as, let's call it, the problem space. The process of problem-solving is essentially one of navigating through this problem space from the present state to the desired state.

Usually, that navigational process is not completed in one step. What we typically find is there is a long and winding road through the problem space that has many different sort of nodes. And the process of moving from one node to the next through the problem space entails or requires making a decision. So, the relationship between problem-solving and decision making is that problem-solving is the process of navigating the space, and a decision is what you do at every point where you're jumping from one node to the next.

First of all, inside that problem space, there's a number of smaller sub-problems. So, a problem can often be broken down into a number of smaller problems. Similarly, you may be dealing with a situation where you have more than one problem bearing on a situation at once. So, you're going to have to kind of think of this as existing in many different dimensions.

Now, there's a number of things we need to keep in mind in applying this model to legal problem-solving, or any kind of problem-solving, really. The first is, the manner in which you go about specifying the desired state—

where you want to get to—is likely to determine where in fact you end up. Hence, the old aphorism of be careful what you wish for, you may get it. If you conceive of the end state, the desired end state in a particular way and then you aim for it, that's where you're more likely to get. So, a careful, meticulous and thorough specification of the desired state is extremely important in successful problem-solving. Otherwise, you may find yourself ending up someplace that you didn't really mean to go.

Second, not all paths through that problem space are created equal. Some paths are going to be more obvious than others. Some paths are going to be more expensive than others to traverse, requiring the expenditure of more resources, and some paths may have collateral consequences, even perhaps negative collateral consequences, so that you end up creating new problems as quickly as you solve the one with which you started.

One reason that a person with a problem might want to retain a professional—that is to say, a person with expertise in dealing with particular types of problems—is that that person thinks, often rightly, that an expert, a professional, will possess special navigational skills in getting through the problem space in a particular context. So, an expert may be aware of paths through the problem space that non-experts don't know about, or an expert may be more able than others to predict which paths look promising at the outset may end up being dead ends or worse. An expert may also possess actual tools for traversing the problem space, sort of like a river guide who has actual skill in getting you through a rapids that someone who's not a river guide wouldn't possess. Developing expertise entails, among other things, learning to locate and then traverse various paths within a particular type of problem space.

Before applying this to legal problem-solving, let me say one more thing about problem-solving in general. Navigation through a problem space can be more or less naturalistic on the one hand, or viewed from the opposite side of a continuum more or less formal. The formal model shows you how with infinite time and resources a perfect decision maker might go through the process of making a particular decision, deciding how to move through a problem space from node to node. But, very little of the problem-solving or decision making we actually do during a day is of this type.

Rather, most of the decision making/problem-solving activity we engage in is what we might call naturalistic. It occurs automatically, sometimes so automatically that we don't even think of it as problem-solving. We just think of it as something we do. And in that naturalistic form, what we find is that when we size up a situation, we automatically categorize that situation as being of a certain type. We put it in a particular box. That box can also be called a schema.

Seeing the situation instantiates a schema or a pattern in your head. And that pattern or schema, once instantiated or triggered, supplies you with a whole set of implicit skills for dealing with the situation, solving the problem, making the decision. One of the things the schema often supplies you

with is a stock solution, a stock pathway through the problem space, so you can move from problem to solution very quickly, often without great reflection.

A good deal of the development of professional expertise entails learning, indeed over-learning, a certain set of expert schemas, a certain set of special pathways through a problem space that only experts know about and, as in the case of a licensed professional like a lawyer, that only members of the licensed profession are permitted to walk with a client.

So, a lot of what we do in law school is teaching; we over-teach both a particular set of expert schemas and also tools for learning new expert schemas once the student leaves law school and enters the world of practice.

For example, a litigator learns almost automatically to recognize inadmissible hearsay and to know what to do in response in terms of the nature of the objections made and the grounds given for making the objection. A litigator develops an ability to almost automatically recognize an incurable defect in a pleading, either your own or someone else's, and either change your legal strategy in response, or file a responsive pleading that results in the dismissal of the suit.

The traditional law school curriculum is really very, very good at transmitting steps of expert schemas to law students, and at transmitting the tools by which those law students, once they leave law school, can continue to build on their set of expert patterns and models. The case method in particular is very, very good at this. It helps us teach students a basic vocabulary, and it's easy after you've been in practice for a while to remember just how difficult it was to master the basics of legal vocabulary. It teaches basic legal analytical method, attention to factual and analytical detail, the ability to consider an issue for multiple points of view, a suspiciousness of easy answers, an ability to identify analytical or factual slights of hand, and the audacity to speak up about them.

Let's take an example of how this model might work in helping solve a problem that a particular client has. Let's assume we have a client who is a real estate developer, someone who develops low and moderate income housing. And our client has a problem, goes into the office one day, and he's served with a class action lawsuit alleging that foam insulation used in the construction of the units is making tenants sick. Clearly, the present state of affairs diverges rather dramatically from the desired state of affairs. Your client has a problem.

Now, navigating through the problem space in that situation requires, among other things, being able to predict how a variety of legal issues might be decided if the case went all the way through litigation, pretrial discovery, trial, appeal, et cetera. Making accurate legal predictions in that regard requires knowledge of the substantive law, and it requires knowledge of the tools that you used to go about predicting what legal outcomes will be.

Clients expect their lawyers to possess the knowledge required to predict legal outcomes. I don't think any of us would suggest that legal exper-

tise narrowly considered or narrowly defined is undesirable in a lawyer. But, here's the rub. The same schematic knowledge that enables experts to readily perceive, sort and process relevant information to do what the expert schema suggests one should do, also necessarily constrains perception and judgment. The schema not only tells you what to look for, what's important, what to do, and what will happen, it also tells you what's not important, what not to do, what not to consider, what not to factor into decision making. And there may be attributes of the desired state that the real estate developer client wants to get to that have little bearing on the attributes that are made salient by the legal schema.

For example, the street fighting lawyer would probably conceive this problem as, "The present state is that my client has been sued by scumballs, the desired state is I crush them, and the way to get from the present state to the desired state is with a brilliant litigation strategy." But that problem frame doesn't take into account things like the developer's relationships with regulators, relationships with those who provide financing for future projects, the client's self-conception, the client's values, or the client's reputation in the community in the future.

So, there is nothing about that expert schema, narrowly conceived, that helps one fully develop all of the different attributes of the desired state. Expertise not only has an effect on what gets envisioned as the desirable outcome, it also effects the number and nature of the pathways through the problem space that get considered. Therefore, there may be ways through that space that have fewer negative consequences for the client that the lawyer will not think of, because that is not part of what the lawyer conceives as being within his or her expertise.

Expertise also affects the attention given to collateral consequences of movements through the problem space. So, the lawyer may not notice the client is spending hundreds of thousands of dollars defending the case, or the client's reputation in the community is being damaged. In short, the best solution may not be the solution triggered by an expert schema.

Where does this leave us with respect to the teaching of substantive law and the development of creative approaches to legal problem-solving? In other words, what does it mean for a navigation through a problem space, a legal problem space, to be creative? Let me word that in a slightly different way or approach it a slightly different way that I think avoids some of the baggage attached to the word "creativity."

In short, I'd suggest that creativity in legal problem-solving means the synthetic use, the appropriate and synthetic use of both divergent and convergent thinking styles. Seen in terms of the acquisition and mobilization of schemas, we might say that creative problem-solving involves the ability both to recognize value through the application and execution of an expert schema, and also to recognize value when it exists outside of a schematic framework. What we need to be teaching students to do is, at the same time, helping them master expert legal schemas and to be able to detach from

them. The same kind of sympathy and detachment that Tony Cronin in his book, *The Lost Lawyer*, characterizes as being a part of good client counseling, we also have to incorporate into our students' relationship with their own thinking process.

Our students have to both value traditional legal thinking and be able to detach from it. To move back and forth into and out of different thinking modes, and perhaps in our discussion time, we can talk about some specific strategies for accomplishing that. Thank you.

MS. MORTON: Many thanks to all our panelists.

