

CREATIVE PROBLEM SOLVING: Mixing the Traditional with the Non-traditional

by Katharine Rosenberry

It will come as no shock to attorneys that many areas of the practice of law are changing rapidly. Some clients are rejecting billable hours, requiring lawyers to devise new billing methods. Lawyers increasingly want a more balanced life, requiring firms to recognize that money alone is no longer a sufficient incentive to join or stay with a firm. Courts and legislatures are calling for lawyers to create new procedures for solving problems. And globalization of practice means lawyers have to increase their knowledge of other cultures.

Some areas of the law are developing rapidly, too. While landlord-tenant law developed over hundreds of years, for example, the same luxury is not available for today's complex issues, such as cloning.

Lawyers are responding to these changes by using a variety of methods for preventing and solving problems. The analytical process we all learned in law school is and will remain the foundation of legal problem solving. Other disciplines — such as cultural anthropology, cognitive psychology or business and communications theory — can help us develop creative problem-solving techniques. They can help define clients' problems more broadly, leading to more options for prevention and solution. These disciplines also provide non-analytical problem-solving methods that in some situations may produce more satisfactory results for clients.

I first became interested in the field of creative problem solving when I was working on a project in France. French condominium law is similar to American law. The law permits the homeowners association to impose late charges, record a lien on a condo unit and force a sale when an owner doesn't pay monthly assessments.

A manager of a 456-unit condominium building in Paris gave me an example of the procedures his group used when an owner doesn't pay assessments on time. Instead of immediately resorting to a legal solution when an owner was delinquent, the association inquired about the owner's failure to pay and learned that he had lost his job. The association then loaned the owner money at market-rate interest to pay the assessments so he wouldn't incur late fees. The other owners then contacted friends and relatives and found the man a job, making it possible for him to pay back the loan and pay assessments on time.

By defining the problem in human as well as legal terms, the association not only solved the problem but also prevented it from happening again. The association also created a sense of community, thereby making the condominium complex a better place to live.

I had the opportunity to use this approach when California Western School of Law built its administration building. Because the school needed to build at the lot line to make the project feasible, it was necessary to obtain a temporary easement from the adjoining property owners to construct the building. This property was operated by an order of nuns as a residence for lower-income, single, working women. The nuns explained they were reluctant to grant the easement for the workers to go on their property because they were concerned the women's privacy would be invaded by workers looking into bedroom windows. I saw that conditions in the bedrooms were depressing. The curtains were dilapidated, which is the reasons they didn't provide sufficient privacy to the women residents.

In exchange for the easement, the school provided mini-blinds that the

nuns chose for all bedroom windows, and it designed open areas of the building so the view would be as pleasing as possible from the bedrooms. It also arranged to have furniture donated to the residential facility.

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, everyone felt good about the solution.

In addition to defining the problem more broadly, creative problem-solving techniques use both traditional and non-traditional approaches. For example, after unsuccessfully trying traditional approaches for finding additional funding for a legal clinic, those responsible for fund-raising used a method known as random-word association, whereby one randomly picks a word and then associates that word with others. The purpose of the association is to generate ideas for solutions that might not occur to a person using an analytical process.

The group selected the word "toast" and freely associated. Their associations eventually led them to initiate breakfast meetings with the business community to raise funds. What may have begun as a bit of fun ultimately resulted in increased funding.

Obviously, there is no one right way to prevent or solve a problem in the practice of law. Therefore, lawyers who are able to use a variety of techniques are more likely to succeed in the rapidly changing legal environment. ■

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