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I am pleased and grateful that so many of my colleagues chose to write for this symposium. Their articles display a great range of bold and ingenious approaches to integrating dispute resolution into law school curricula and will help and inspire others to adopt and extend some of the innovations outlined. I am also grateful to Professor Robert Moberly and the editors and staff of the Florida Law Review for their hard and good work in preparing these works for publication.

I have learned much from reviewing the articles in this symposium, but since I have had many other opportunities to say what I think about dispute resolution in the law school curriculum, I will limit my remarks here and comment only on a few of the points made by Professor Ronald Pipkin. Professor Pipkin criticizes our use of the term *problem-solver* to describe the model of lawyering we are trying to promote.[1] He complains that the term is susceptible to so many meanings that virtually any law student or lawyer can identify with it, even those who do not subscribe to many of the tenets that we associate with the term.[2] And he concludes that "if the Missouri program is to be known for producing new lawyers with visions of practice expanded beyond adversarial advocacy, a new term for that kind of lawyer would be helpful."[3] I agree, essentially, with Pipkin's critique of our use of the term problem-solver. It certainly supports many interpretations, and who in the legal profession would not want to associate with that label? Worse still, even in the dispute resolution literature, the term has nearly lost the meaning we associated with it. When Jim Westbrook and I said that we saw "problem-solving as the overriding function of the lawyer, the general mission of lawyering"[4] we drew partially on the definition of problem-solving *negotiation* developed by Professor Carrie Menkel-Meadow.[5] We thought this term would outlast the

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1. *See* Ronald M. Pipkin, *Teaching Dispute Resolution in the First Year of Law School: An Evaluation of the Program at the University of Missouri-Columbia*, 50 FLA. L. REV. 609,620 (1998).

2. *See id.* at 620.

3. *Id.* at 630.

4. LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS 52 (1987).

5. *See generally* Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984).

other then-current labels for interest-based[6] approaches to negotiation, such as principled,[7] integrative,[8] collaborative,[9] or value-creating.[10] We were wrong, of course. Each of these terms still enjoys a substantial following in the negotiation literature. And some mediation scholars have assigned problem-solving a quite different meaning. To Professors Baruch Bush and Joseph Folger, for instance, it signifies any approach to mediation that seeks primarily to settle a dispute, rather than to "transform" the participants.[11]

Even if the term problem-solving had established primacy in the negotiation and mediation literature, however, it would not have been fully adequate as a description of the lawyering orientation we are trying to promote. We mean by the term to describe a lawyer who focuses on the client's interests *as well as* legal entitlements, and who can select (with the client) and carry out the most appropriate methods for pursuing those interests. But we do not mean to imply that the lawyer should always use interest-based *strategies and tactics* for pursuing those interests. As most commentators now recognize, there is a tension between interest-based and position-based strategies and techniques.[12] This means that sometimes the most effective way to pursue or protect an underlying interest is a position-based move, such as litigation or adversarial negotiation. It also means that the negotiator or lawyer must be aware of that tension at all times and constantly monitor and evaluate her choice of approaches.

Thus, plainly, we need a new term to describe the kind of lawyer we are trying to promote, and I would welcome suggestions. Meanwhile, as Professor Pipkin has implied, the term problem-solver has allowed a large number of professors, students, and lawyers to support our endeavor.

Professor Pipkin's second point gives me some trouble. He argues that, in order for us to accomplish the curricular innovation we sought, we had to "tame" certain "heresies"—non-adversarial perspectives and values that

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6. CHRISTOPHER W. MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT 107-08 (2d ed. 1996).

7. *See* ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 10 (2d ed. 1991).

8. HOWARD RAIFFA, THE ART AND SCIENCE OF NEGOTIATION 131 (1982); Donald G. Gifford, *A Context-Based Theory of Strategy Selection in Legal Negotiation*, 46 OHIO ST. L.J. 41, 54-57 (1985).

9. Gary T. Lowenthal, *A General Theory of Negotiation Process, Strategy and Behavior*, 31 U. KAN. L. REV. 69, 73-75 (1982).

10. DAVID A. LAX & JAMES K. SEBENIUS, THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATIVE AND COMPETITIVE GAIN 30-32 (1986).

11. ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION 11-12 (1994); *Mark S. Umbreit, *Humanistic Mediation: A Transformative Journey of Peacemaking*, 14 MEDIATION Q. 201, 203-04 (1997).

12. *See* LAX & SEBENIUS, *supra* note 10, at 30-35.

he associates with the "ADR movement."[13] Professor Pipkin suggests that our heavy reliance on teaching about pretrial settlement negotiations instead of mediation represents a serious compromise.[14] His argument apparently stems from his belief that we wanted to teach non-adversarial approaches to dispute resolution as ends in themselves, or in order to transform lawyering. Although I can understand how he formed such a belief,[15] in fact, as I have indicated above, we wanted to introduce such interest-based approaches principally to get them onto the map so that students and lawyers could consider and weigh them, in relation to adversarial approaches, in light of particular clients' situations and interests. Negotiation presented the most feasible method for teaching about interests, for several reasons. First, all lawyers negotiate, so everyone in the law school community recognized some value in negotiation instruction. For that reason, and because the negotiation literature is so well developed, teaching negotiation is the best way to teach about interests. Second, understanding negotiation is fundamental to understanding, choosing, and participating in other processes, especially mediation. So the emphasis on negotiation enabled us to do a better job of teaching about mediation. Thus, we did not compromise; we simply chose the most appropriate and efficient way to promote our objectives.[16]

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13. *See* Pipkin, *supra* note 1, at 648.

14. *See id.*

15. Some of my earlier writing may have supported such understandings. *See, e.g.*, Leonard L. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29 (1982); Leonard L. Riskin, *Mediation in the Law Schools*, 34 J. LEGAL EDUC. 259 (1984). My idealism, which fueled those writing, has been tempered over the years by exposure to the realities of evolving dispute resolution practices. *See* Leonard L. Riskin, *Understanding Mediator Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEG. L. REV. 7 (1996).

16. I recognize that not all the students or professors involved in this project at Missouri or at our partner schools appreciate or agree with the subtle qualities that I have claimed for our goals. Moreover, as Professor Pipkin has shown, often the students do not learn what we are trying to teach them. For instance, a student who uses an open, interest-based approach in a negotiation simulation and gets burned by his counterpart's adversarial approach may infer that he should always use an adversarial approach, missing the more important point that a good negotiator must monitor the tension between such approaches. At the other extreme, one student wrote that the central message of our project was to avoid court at all costs. The notion of the tension between adversarial and problem-solving approaches tends to evade the grasp of many students, first-year and advanced.

The adversarial perspective, with its reliance on rules and rights and positions, is essential to lawyering, probably its foundation. The ability to understand and manipulate legal rules and the mechanisms of justice helps distinguish lawyers from other problem-solvers, such as friends, counselors, social workers, and psychotherapists. In this project, we never intended to *displace* the traditional perspective; instead, we wanted to supplement it, by adding other perspectives with which it would be in tension. The *Dispute Resolution and Lawyers* books are laced with what Professor Pipkin might consider heresies. We have not so much tamed them as put them into a lawyering context, side by side with other approaches.

Finally, Professor Pipkin also notes that many students associate ADR with "non-heroic" attributes that failed to attract some significant portion of the students he surveyed in the early days of the program.[17] He suggests that we could make the program more "realistic" and its lessons more appealing to some students if we would create teaching materials "based on actual cases of successful dispute resolution."[18] I agree with this suggestion, too. During the coming academic year, we expect to launch a sustained effort to produce case studies–dealing with both successes and failures—partially in concert with the new LL.M. program in Dispute Resolution that begins in Fall 1999. This will extend similar activities that have been employed at the University of Missouri School of Law for some time.[19]

Each of Professor Pipkin's evaluation reports has illuminated our path, both the portion we have traversed and the portion that lies ahead. His article in this Symposium continues that tradition, and I am deeply grateful for his sustained, thoughtful attention to this project and for the many insights he has provided.

17. *See* Pipkin, *supra* note 1, at 658.

18. *Id.* at 655.

19. These studies will be prepared by LL.M. and J.D. students in a course entitled Dispute Resolution Case Studies. I have taught versions of this course four times, twice as a joint law school-journalism school course. In that course, which I team taught with Journalism Professor Steve Weinberg, we paired law students with journalism graduate students to prepare in depth investigative magazine or newspaper articles, each of which explored the underpinnings–events and people and their perspectives—of a particular case. In addition, I have required students to prepare case studies in some dispute resolution courses. *See* LEONARD L. RISKIN ET AL., INSTRUCTOR'S MANUAL WITH SIMULATION AND PROBLEM MATERIALS TO ACCOMPANY RISKIN & WESTBROOK DISPUTE RESOLUTION AND LAWYERS 3-7 (2d ed. 1998).