Correspondence

Negotiation Journal welcomes comments and observations from its readers. They may be addressed to: *Negotiation Journal*, The Program on Negotiation, 513 Pound Hall, Harvard Law School, Cambridge, Mass. 02138. Emailed correspondence should be sent to: bbreslin@law.harvard.edu. We reserve the right to reject or edit such correspondence.

Teaching Atticus Finch: Bringing a Problem-Solving Perspective to the Next Generation of Lawyers

Professor Jacqueline Nolan-Haley's elegant review essay, "New Problem-Solving Scholarship: An Historical Tale with a Happy Ending" (*Negotiation Journal* April 2003) gives truth to the adage, "Good things come in small packages." In a pithy fourteen-page examination of three new possible additions to the conflict resolution curriculum, Professor Nolan-Haley not only provides a useful assessment of each teaching tool's strengths and possible uses, but prefaces her discussion with an intellectual history of conflict studies that illuminates the fault lines continuing to divide the dispute resolution community today.[1]

As Professor Nolan-Haley tells it, the field of conflict studies was founded by successive waves of intellectual adventurers, all haling from distant shores. First to plant the flag were cultural anthropologists, psychologists, economists and sociologists, thinkers who used the theoretical tools of their home disciplines to construct a "thick description" of the way individuals and societies respond to conflict.

Lawyers, trained to think of disputes as sets of facts arranged to support various legal theories, came late to the party. When they did, they brought with them an adversarial perspective and emphasis on legal entitlements that fit awkwardly into a holistic assessment of disputant needs and interests. Lawyers' entry into the field also heralded increased calls for regulation and sparked turf battles that led lawyer and nonlawyer mediators to suspect one another of nefarious, profit-driven motives.

Professor Nolan-Haley's history ends with the optimistic suggestion that problem-solving legal scholars have begun to challenge the adversarial orientation and psychological myopia inherent in traditional legal culture. These

0748-4526/03/0700-0265/0

scholars, oriented toward "collaborative, creative and responsive solutions to clients' human needs" have, in this account, "begun to significantly transform both the practice of law and the training of its practitioners. . ." The tantalizing review she provides certainly offers hope that this generation of problem-solving scholars will bring forth the next generation of problem-solving attorneys.

We should, though, expect a bit of a wait.

It was only several weeks ago, in a casual corridor chat, that a law school faculty colleague confided to me that she still tells her students that the other side is "the enemy " and, to paraphrase Vince Lombardi, "winning is everything." A former defense attorney, my colleague believes that the prosecution, in trying to jail her clients, has engaged in an act of war. As an evidence and criminal procedure professor, she continues to live and breathe the role of lawyer as gladiator, and that is what she communicates to her students. I have heard similar comments from civil attorneys.

It would be easy to condemn this glib bellicosity if the issues weren't so complicated. After all, attorneys are the assigned guardians of individual rights. And the legal protections accorded individuals represent societal judgments about how we should treat each other and what, in the face of wrongdoing, is our due. Legal rights are often the only common link that our most marginalized members of society share with their more privileged fellows. If we urge clients to relinquish some of what the law might supply in the name of consensus and closure, can we be sure that we aren't urging compromise on those who have given up too much already?

As Professor Nolan-Haley points out, the legal academy has, by and large, taken a simplistic approach to defining the lawyer's duty to her client. Single-minded vindication of client rights ignores other pressing needs. The costs of such pursuit are often enormous. Law schools need to do a better job teaching lawyers about the complex human dynamics at work when people dispute. We need to do a better job in broadening our students' conception of the lawyer's role. For this, we are fortunate to have not only the writings of the original conflict studies pioneers, but the newer teaching materials reviewed in Professor Nolan-Haley's essay.

On the other hand, the nonlegal ADR community might look a bit more sympathetically at the way lawyers are socialized, even if changes in that socialization process are in order. The students I teach possess dog-eared copies of Harper Lee's *To Kill A Mockingbird*. They want to be Atticus Finch, righteous defender of unpopular causes. They devour *Brown v. Board of Education* and *Roe v. Wade*, and imagine that, sometime in their legal career, they will be Thurgood Marshall or Sarah Weddington, changing the fabric of the law in ways that give countless people the tools for a better life. They will do this, they imagine, not by making peace, but by making waves.

There is much work to be done, both in refashioning the law school curriculum to build in more problem-solving training, and in bridging the

intellectual and epistemological gaps that continue to breed misunderstanding and distrust between the legal and nonlegal camps of the dispute resolution community.

Professor Nolan-Haley, a mediation scholar whose concern for social justice leads her to a careful examination of the role of the law and legal information in mediation, offers us a model. Given the important role that conflict resolution studies is likely to play in the years ahead, she offers a path we should eagerly follow.

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NOTE

1. The three works — two texts and an instructional video and curriculum package — considered by Professor Nolan-Haley in her review essay were:

Mediation, by Carrie Menkel-Meadow (Burlington, Vt.: Ashgate Publishing Co., 2001);

Understanding Negotiation, by Melissa L. Nelken (Cincinnati: Anderson Publishing Co., 2001); and

Saving the Last Dance: Mediation through Understanding, a mediation teaching and training video, by Robert H. Mnookin, Jack Himmelstein, and Gary J. Friedman (Cambridge, Mass.: Program on Negotiation at Harvard Law School and New York and Mill Valley, Calif.: Center for Mediation in Law).

Sequencing in Negotiation and a Proper Acknowledgment

I would like to thank *Negotiation Journal* for helping to elevate the importance of sequencing in intractable communal conflicts, the subject of a column I wrote that was published in your April 2003 issue (Volume 19, Number 2). Through the publication of this article, it is my hope that sequencing in these types of conflicts will be firmly placed on the map of important issues to consider in detail, and will no longer be overlooked by scholars and practitioners of negotiation

On the subject of "overlooking," I regret that my column failed to acknowledge a number of people who made important contributions to this work, and would like to take a moment to give them their proper credit. The essay published by *Negotiation Journal* stems from my Ph.D. research and dissertation at George Mason University. Professor Daniel Druckman was the Chair of my Ph.D. committee. Dan's overall guidance and his vast knowledge of research methodology were invaluable to my finishing the project. Professor Tamra Pearson d'Estree, a dissertation committee member who is now at