

University of Missouri School of Law

University of Missouri School of Law Scholarship Repository

Faculty Blogs

Faculty Scholarship

10-22-2014

“LABELS SUCK”

John Lande

Follow this and additional works at: https://scholarship.law.missouri.edu/fac_blogs



Part of the [Dispute Resolution and Arbitration Commons](#)

"LABELS SUCK"

OCTOBER 22, 2014 | JOHN LANDE | 1 COMMENT

So said the illustrious founder of our blog – at least until good taste or something else induced her to change the title of an article to the more borrrrrring, "[Teaching a New Negotiation Skills Paradigm](#)." (On the other hand, if you really want to rack up the SSRN downloads, use a sexy title like "[Fuck](#)." Pre-tenured colleagues, don't try this at home.)

I mention Andrea's pithy observation because, in commenting on [my post about teaching about puffing](#), Art points out that there is [confusion about the meaning of "puffing"](#) as it is commonly used compared with the technical legal definition.

Alas, this kind of confusion is a common phenomenon in our business. In the Lawyering course in my school, we cover interviewing and counseling, negotiation, and mediation, among other things. The texts refer to lawyer- and client-centered counseling, positional interest-based negotiation, and evaluative and facilitative mediation (though these concepts have many other labels).

I dutifully taught these concepts and required students to define and apply them on the exam. Until this year.

But I agree with Andrea. Our labels do suck. Although she focused only on the negotiation context, I would generalize this observation beyond that.

Students – and actually many of us – are pretty sloppy in our use of these terms. People often think of client-centered counseling, interest-based negotiation, and facilitative mediation basically as being nice and the opposite approaches as being tough (if not naughty).

So starting this year, I briefly defined the terms so that students recognize them and I described the problems with them – and then I warned them **not** to use the terms.

Instead, I focus on the concrete behaviors that these labels are supposed to represent. This is relatively easy regarding counseling because it focuses on a single dimension of allocation of decision-making between lawyers and clients. Regarding mediation, Len Riskin iden-

tifies a number of distinct behaviors distinguishing facilitative and evaluative mediation (and variations of these labels). Similarly, I found that negotiation texts identify a number of different characteristics of the competing models, with no consensus on what features are essential. So when I teach these topics now, I focus on the various dimensions of the concepts.

We have to live with terms like "puffing" because they are embedded in the law and have significant consequences.

But in the real world, people generally don't use our labels. I suggest that we stop using them and, instead, shift toward using more concrete terms that are less confusing.

◀ BE CAREFUL ◀ DID YOU HEAR ABOUT? ◀ DISPUTE RESOLUTION FIELD ◀ FOR TEACHERS AND STUDENTS ◀ NEGOTIATION

ONE THOUGHT ON "“LABELS SUCK”"

Ben Walker

DECEMBER 1, 2014 AT 2:38 AM

I found this post while reading your post about defining negotiation, and I completely agree on your remarks about labels. I have a distain for placing labels on situations/ideas/processes, but ultimately labels are required to have a general consensus on a how to summarize a situation/idea/process. The label allows for an individual to relate the word to this particular situation/idea/process without having to go in great detail in describing the actual situation/idea/process. The practicality in labeling is the reason it is common in legal vernacular. With attorneys being extremely frugal with their time, it is no surprise that the ability to simply state a situation/idea/process in a word or two is commonplace. These labels suck because the original intention behind the label is never what it was originally intended to be. People mold and shift the label until it becomes a convoluted mess, resulting in the debate of what the label initially meant. In my opinion, as long a person has general knowledge of what the label means, then that is what matters. The ability to define a label has little importance since the current definition of the label mostly likely does not meet its original definition. While I do commend you for not requiring students to define and apply particular labels on exam, students should have some understanding of them to allow for effective communication with most to exist.

This site uses Akismet to reduce spam. [Learn how your comment data is processed.](#)

