



LETTER TO A FIRST-YEAR LAW STUDENT

Luther T. Munford[†]

We recently received this email message from Mr. Munford:

This is a letter I wish I had gotten when I started law school. I have sent it in various versions to several young friends as they began that adventure. It occurred to me that it might be worthy of publication, and might even stir a debate about what it is most important for first-year students to know. On the other hand, it may be out-of-date, redundant, or superseded by better advice readily made available to today's entering students. On this, I trust your judgment completely.

The letter was attached to the email. We question his judgment about our judgment, but we do judge his letter to be worthy of publication. Here it is.

– *The Editors*

WHEN I STARTED LAW SCHOOL, my idea was that I would learn “the law” in more or less the same way I memorized the Ten Commandments in Sunday School. That was partly right, but that turned out to be only a small piece of it.

The principal purpose of law school is to teach you how to persuade judges to decide in your client's favor. The law ultimately is what judges

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say it is. In the last analysis, what the judges say is what the parties must do. Everything else is prelude. So what law school should do is teach you how to craft an argument that will persuade a judge.

To be sure, knowledge of the “law,” i.e., the statutes, rules, and court decisions that may guide the judge’s decision, is an essential tool. If you don’t know “thou shalt not kill” is in there, you will be totally lost. But it is far from enough.

Among other things, you will also need to learn legal vocabulary. You need to learn the language that judges understand and heed. This is not unlike going to a foreign country to learn its language. An “appellant” lost in the trial court. The “appellee” did not.

Another helpful tool is knowledge of the types of argument lawyers generally make. When considering any text, it is useful to look at, among other things, the words, the intent of those who wrote it, the doctrines that have been used in the past to interpret it, the relative competence of the branches of government to decide, and general principles of ethics and fairness.

For example, one question might be whether “thou shalt not kill” ever prohibits killing by the state. The following are some questions that might be asked in a debate over that issue. They illustrate various types of argument:

- What does the Hebrew word for “kill” mean? (Text)
- How was this interpreted by the Israelites when they put the inhabitants of Jericho to the sword? (Historical intent)
- How have the various religions who look to Moses – Jewish, Christian, Moslem – interpreted the commandment? (Doctrine)
- Could a court enforce a prohibition against all state killing? (Institutional competence)
- What would the moral consequences be if the state were not allowed to kill? (Ethics)

The point of law school is not to teach you the “right answer” to the question of what “thou shalt not kill” means. Rather, it is to teach you how to put together the strongest possible arguments for whatever interpretation helps your client.

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You may well be puzzled as to why your contracts professor spends so little time talking about successful contracts, i.e., ones where both sides keep their bargains. It is because there is nothing to argue about when that happens. You need something like ambiguity, changed circumstances, erroneous assumptions and, of course, plain old greed to provoke a dispute about which you can argue.

THE ROLE OF “JUSTICE”

The question arises as to whether this focus on the process of argument is amoral. The suggestion that it is amoral fuels many a lawyer joke. “Is there a criminal lawyer in this town? We think so, but we haven’t caught him yet.”

Understanding the morality of the law begins with law’s fundamental public purpose, which is to settle – or prevent – disputes between parties who disagree. We cannot live with each other without a way to settle disputes. When all else fails, the adversary process provides that way. To make it work, each side needs a “champion” irrespective of what the champion’s personal views may be. So lawyers have to be able to make the arguments most likely to convince a judge that their client’s case is “just.” As long as basic ethical rules are followed, the lawyer’s job is not to be the judge. It is to help the client resolve disputes in a way that protects the client’s interests so that the judge can reach a result the parties and public will accept as being just.

You no doubt have too much to read already, but at some point, perhaps after you finish your first semester, you should read *The Nature of the Judicial Process*. In it, Benjamin Cardozo, a celebrated judge, describes how judges go about deciding cases. Because your task is learning how to persuade judges, it is helpful to know what at least one judge thought about that process. He wrote it in 1921 but his description still rings true.

In the book he says that the law is neither a mathematical problem nor a sportsman’s game.

What he means by not a “mathematical problem” is that it cannot be said that Fact A + Fact B and Rule C will always produce Result D. Inevitably differences among who the lawyers, judges, and jury are may well produce different outcomes. Different people have different values. That is illustrated by the variety of answers people in the past have given to the question,

“what is just?” Some, for example, have found standards of justice in the teachings of a religion, or economic efficiency, or what is best for those who are least well off in society, or the need to resolve disputes peacefully.

When Cardozo says that the law is not a “game,” he means that lawyers and judges, even though they like rules, will not always adhere to them slavishly if the result would be unjust. A client’s case may survive even if his lawyer failed to show up for court. If the case had merit, or the default was not the client’s fault, or if the opposing side has not been prejudiced, a client will, sometimes, be given a second chance. This is, however, a lesson best learned from the law books, and not personal experience.

But I do believe that the sanest way to think about the law is to see it as a special type of game. There are rules, and violations of the rules frequently, if not inevitably, result in penalties. In this game the principles of justice, however defined, are always present, just as in a ball game the laws of gravity must be obeyed. Some things are certain. The plain language of a contract will, when its meaning is plain, usually be given effect. The lines on the playing field are there for the players to see. Players cannot fly through the air. But beyond that there are wide-open opportunities for tactics, argument strategies, and determined players. To continue the analogy, there is still plenty of room for a “Hail Mary” pass on the last play of the game. Your job is to learn how to throw it when your client needs it.

LAW SCHOOL

You should recognize that law schools have limited their role in this sport. They see it as their task to teach you principles of logical tactics and argument, i.e., to “speak the language” of law. They generally do not see it as their role to teach you principles of psychology, or rhetoric, or other “illogical” ways to persuade someone of the justice of your case. As long as you recognize what they are doing, and that you will ultimately need more to be an effective advocate, you will be okay.

Law schools generally use the “casebook” method. Students study cases, i.e., what judges have said when they resolved some particular point. As you read and outline the cases, you should multitask:

- What was the issue and how did the court resolve it?
- What were the arguments that each side made and why were they accepted or rejected?

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- What kinds of arguments were made?
- What other arguments and kinds of arguments can be made on this issue?

Which brings me to more mundane tactics for dealing with law school. Some advice:

- Read and outline your cases before class. Then correct and annotate your outlines during class. When you are in your third year you may find it possible to reverse this process, i.e., outline in class and annotate at home. But in the first year you may find that teachers do not give you much of an outline because they want to teach you to argue, not to just parrot back a “right” answer.
- Find a group of like-minded students with whom you share your classes and form a study group. You will be surprised at how much you can learn from others’ perspectives. Take turns doing course outlines. Some of my best friends today were in my study group. I hope you will be as lucky.
- If possible, get exams your professors have used in the past and work them together. It will help you know what your goal is, i.e., spotting issues and listing arguments that might be made while coming to some reasonable conclusion. I have always thought this was a bit like quail hunting. You flush the issues out and then shoot them down.
- Find time to exercise and have fun. There are lots of opportunities for both in your town.

We are all proud of this step you are taking and wish you every success in this exciting venture.

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