

## Much to Learn, You Still Have

saw everyone else rushing up the escalator in the hope of getting it?

I have been teaching now for 30 years. That gives me a pretty big group of former students who serve as my eyes and ears. Many of them started at big firms and found that the environment did not suit them at all, which is just fine. Pay back those loans before you put on the golden handcuffs of a condo you really can't afford and a fancy car you don't really need. You may not be in a position to follow your heart in your first job; you may love Big Law. But don't forget that even if no one can have it all at once, you don't have to give up your dreams because of what it costs to earn that J.D. My happiest former students are the ones doing things that they love—prosecuting, defending, practicing law in the four corners of the world, starting new firms and businesses, and yes, practicing in big law firms that really do suit them.

Try to remember. What was it you wanted to be? Even if you can't do it today, don't give up on doing it tomorrow. Hold onto your dreams. Build toward them.

At the end of the day, as in all things, it is not the hand you are dealt but how you play it. Not where you went to law school but what you do with that degree. Not what your first job is but where you choose to make your mark.

There are good days and bad days in the practice of law—tedium and excitement, challenge and disappointment. But more than three decades after graduating from law school, I am still in love with the law—in love with the way we think and analyze, the push and pull, with the struggle to create a legal system that commands and deserves respect, and most of all, with the feeling of doing well by my client. Years ago, I reviewed a law review article submitted by a distinguished professor, the gist of which was “the lawyer as friend.” How silly and simplistic, I thought at the time, and with the arrogance of a third-year law student, I rejected it. I was wrong.

People may hate lawyers, but when they are in trouble, they want the best. Clients put their businesses, their lives, their careers, and their families in your hands. It is a great responsibility but also an act of trust and respect. We go out into the world and do our best by them, standing by our clients whether they are right or wrong, serving as their advocates but not their judges. To be that kind of friend is a noble act, a blessing that our education allows us to offer. ❖

Congratulations on joining our profession. Presumably you arrived here at the start of your career after several years of law school. That experience should have provided you with a new vocabulary and a variety of skills to enable you to think like a lawyer. You probably have already discovered, however, that law school does not actually prepare you to practice law. Thus, you recognize the need to continue your education through practical training. But before rushing off to expand your knowledge by building on that law school foundation, you must evaluate that foundation and shed some bad habits you probably picked up along the way.

One vocal critic of the bad practices fostered by law school is Ninth Circuit Chief Judge Alex Kozinski, who recently quipped, “Every year I hire as law clerks some of the best and brightest law students in the country, and spend a year wringing out of them all the wrong-headed ideas their law professors taught them.”<sup>1</sup> Or as Jedi Master Yoda said to Luke Skywalker in *The Empire Strikes Back*, “You must unlearn what you have learned.”

Here's what you really need to rethink from your law student days.

**READ ENTIRE OPINIONS.** Students spend great amounts of time reading appellate opinions in law school. Actually, what students read in all those casebooks are excerpts from appellate opinions, edited to focus on a particular facet of a decision. Only rarely do they read a full opinion. Typically, the edited-for-teaching version omitted, at the very least, factual and procedural details, and may have omitted additional analysis and concurring or dissenting opinions. The habit of reading only part of an opinion can be very dangerous. To paraphrase Professor Emeritus Gideon Kanner of Loyola Law School, “Every opinion carries within it the seeds of its own destruction.” If

you fail to read the entire opinion, you may miss something important—something your adversary is likely to find and use against you. At some point in law school, your professors warned against relying on headnotes. Heed that advice, and break the habit of reading only selected portions of cases. Read the whole megillah every time.

**ALWAYS THINK CROSSOVER.** Back in law school, you knew that if it was Tuesday morning, it must be torts. Wednesday afternoon was property. Friday was ethics. Class topics were a given, so you knew what to expect. Later, for the bar exam, you prepared for the dreaded crossover questions, which involved more than one area of law at a time. Beyond law school, every day is a crossover day. Real world legal problems aren't confined to a single subject. You must canvass the entire spectrum of conceivably relevant topic areas in every case and revisit that analysis as the case progresses.

**PROCEDURE IS CRITICAL.** The abridged casebook opinions you studied probably lacked procedural details (except, of course, in your civil procedure class), and thus, all procedural aspects could be safely ignored while you diligently pondered the substantive law. After law school, you'll quickly learn that procedure permeates everything. The procedural basis for a matter supplies the critical context for all other issues. You may have thought that procedure—simply a bunch of complicated and random rules—is not “real law,” but, in fact, mastering procedure is not optional. Though woefully undervalued in law school—which tends to emphasize the big picture and deep thinking—procedure and evidence are often as important as substantive law.

**STRONG WRITING WINS CASES.** Speaking of undervalued topics and skills, you probably had only one legal research and

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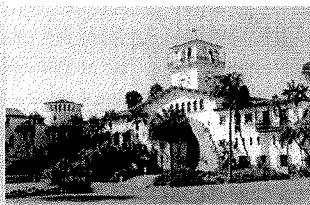


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writing class in law school. It may have been ungraded or worth only a couple of credits or taught by an unappreciated adjunct professor. The course probably was required but not respected as were "real, hardcore" classes such as constitutional law or tax. Gauging by how law schools treat them, one would think legal research and writing are minor, pesky parts of lawyering. Believing that is a huge mistake. In fact, cases are won and client goals achieved—and that is the point, isn't it?—by written advocacy (with oral advocacy a distant second).

If you haven't started already, it's time to hit the books again. Surely, you remember Bryan Garner, editor of the *Black's Law Dictionary* that your auntie gave you when you started law school. Get your hands on some of his practitioner books, such as *The Winning Brief* or *Making Your Case*, or similar books by other authors, such as Ross Guberman's *Point Made*, to jumpstart your legal education to the next level.

**FORGET EXAM-STYLE WRITING.** Most of your law school writing probably consisted of timed exams on single subjects. Because the clock was ticking, you took a lot of approved shortcuts, such as using silly abbreviations and frantically bounding from one issue to another, cramming in various discussion points. The more you wrote, the more issues you could hit and the more exam credits you could earn. Your focus was to display your accumulated knowledge. There was no time for editing. That hurried and scattered form of writing served a particular purpose. Consider it history.

Successful legal writing in the real world requires conciseness, directness, multiple rounds of editing, and as much engaging style as you can muster. Clients and courts want problem solving, not recitation of information. Law school exam answers must rank among the most mind-numbing screeds on earth. But outside law school, if you want your papers to be read and understood, you must marshal facts to tell compelling tales, find just the right—and right amount of—supporting legal authority, and persuade the reader to agree with you—all using the fewest possible words. And while literary style helps capture your reader's interest, don't mistake aggressiveness or sarcasm for flair. Cases are won on the facts and the law, not on who conveys the cleverest put-down.

**THE FACTS MATTER—A LOT.** In law school, the focus, naturally, was on the law. Procedure and writing skills received short shrift. So, too, did facts. Yet in the real world,

the facts drive the outcome. How valuable are the facts and their presentation? Associate Justice Robert S. Thompson, who served on the California Court of Appeal from 1968 to 1979, revealed that he almost always decided how a case would be resolved after reading the statement of facts and that rereading the legal discussion rarely changed his mind. Accordingly, appellate attorney Ellis J. Horvitz is known for making this offer to adversaries: "If I can write the statement of facts in your brief, you can write the legal arguments in mine." You may not have gone to law school to become a detective or a storyteller, but without ability in those roles, your mastery over the law may be meaningless.

**NEVER CRY "UNPREPARED."** The more popular law school professors probably provided you with a chance to respond "pass" when called on in class. There is no such luxury in court. In the real world, pleading unprepared is an invitation to professional ridicule and malpractice. Nor can you make up an answer on the spot to see how it plays out. From now on, adopt the Boy Scout motto: Be prepared. And when the question you can't answer eventually does come your way, politely ask the court for an opportunity to quickly supply a supplemental written response.

No doubt many other law school teachings suffer in real-world practice:

- Law school often focuses on federal law and practice, yet most litigation is done in the state courts.
- Law school emphasizes trial and appellate practice over more common activities, such as discovery, client counseling, and settlement.
- Law school emphasizes case law analysis, yet practice requires much, if not more, analysis of rules and statutes.
- Law school teaches legal research through the use of digests, online searches, and case law, but lawyers more often use treatises and practice guides.
- Law school frequently presents concepts through twisty, jerky, circuitous routes of developing common law, yet real practice prizes pinpoint directness.

To return to the wise words of Master Yoda: "Much to learn, you still have."

Ditching some bad law school habits will forge a clearer path for you. ♦

<sup>1</sup> Book jacket blurb by Alex Kozinski, U.S. Court of Appeals judge, in WALTER OLSON, *SCHOOLS FOR MISRULE: LEGAL ACADEMIA AND AN OVERLAWYERED AMERICA* (Cato 2011); see also Alex Kozinski, *In Praise of Moot Court—Not!*, 97 COLUMBIA L. REV. 178 (Jan. 1997).