

On Thinking Like a Lawyer

You are now all well on your way to that magical state that is the end-product of your first year in law school: thinking like a lawyer. So what have we taught you?

Thinking like a lawyer means, in the first instance, thinking with care and precision, reading and speaking with attention to nuance and detail. It means paying attention to language, but also understanding that words can have myriad meanings and can often be manipulated. It thus also means paying attention to context and contingency. That is all part of the lawyer's craft, or art, which is important both in itself and as a means to larger ends.

Thinking like a lawyer also means that you can make arguments on any side of any question. Many of you resist that teaching, thinking that we are stripping you of your personal principles and convictions, transforming you into a hired gun. On the contrary, learning how to *make* arguments on different sides of a question is learning that there *are* arguments on both sides, and learning how to *hear* them. That is the core of the liberal value of tolerance, but also the precondition for order in a society that chooses to engage in conflict with words rather than guns. It is our best hope for rational deliberation, for solving problems together not based on eradicating conflict, but for channeling it productively and cooperating where possible.

Thinking like a lawyer also means exercising judgment, distinguishing among those arguments, sifting good from bad. Just as you will come to understand that there are arguments made in good faith on opposing sides, you must also learn to reject some arguments, or at least to choose among them. Arguments may be bad because they are illogical, because they do not fit the facts or the law, because they are silly or inconsequential. They may also be bad because they promote bad policies, or because they reflect values that we condemn: racism, degradation of human dignity, greed -- you fill in the blanks. Learning to think like a lawyer means learning to reject some arguments and to embrace others, and to know and be able to articulate why.

Thinking like a lawyer means combining realism with idealism. It means believing in the possibility and the desirability of both order and justice, and in the capacity of the law to help us achieve them. But it also means knowing the full range of human conduct, and understanding that grand principles will remain paper principles unless they are implemented with an eye to human incentives. Nevertheless, in the end the idea of law, and the ideals that it stands for, is what lawyers represent. It is much harder to be an idealist when you have all the reasons to be a cynic.

One of my colleagues at Chicago ends her first year civil procedure class by saying: Sometimes in the first year of law school, people learn to think like lawyers, but to be a little less like people. You've learned the first of those things. You shouldn't let us teach you the second." I disagree. There is no dichotomy here. Thinking like a lawyer is thinking like a human being, a human being who is tolerant, sophisticated, pragmatic, critical, and engaged. It means combining passion and principle, reason and judgment.

You are all well on your way to thinking like lawyers. It's been both a pleasure and a privilege to help get you there.