University of Tennessee, Knoxville

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WHY EVERY LAW STUDENT SHOULD BE A GUNNER

Robert M. Lloyd[??]

In most law schools, students have created a social system that discourages volunteering in class. The stupid, the lazy, and the timid have joined together to undermine the very thing that makes law school special. Here are six reasons you should fight back.

Reason One: Volunteering in Class Will Make You A Pariah Among Your Classmates

That's good training for being a lawyer. Everybody hates lawyers, and you can get practice being hated while you're still in law school.

Seriously, though, if you can't stand a little criticism, you're not going to be much of a lawyer. I've read a lot of admissions essays, and a huge percentage of the people applying to law school talk about wanting to work for social justice. If you're going to be an effective worker for social justice, you're going to upset a lot of people — a lot of powerful and intimidating people, people who are used to getting their way and who can be nasty when they don't. If you can't handle the displeasure of a few law students, don't kid yourself into believing you'll take on the Establishment. You'll wimp out, just like you're doing now.

But suppose you don't want to reform the world. Suppose you plan to make your contribution the way most lawyers do-- by doing a good job for your clients. You're still going to need a thick skin.

Your professors have probably told you already about the way judges will ream you out if you come to court unprepared. What your professors may not have told you is that you're also likely to get reamed out if you do too good a job. Judges are under pressure to keep cases moving, conserving the scarce resources of the judicial system. All too often, this means your client doesn't get the process she's due. And many of these overworked judges are short-tempered (if not downright abusive) when lawyers insist on their clients' rights to get that process they're due.

If you won't risk having your name on the Gunner Bingo card, you won't risk having it on some judge's shit list. What are you going to do when the judge wants to cut off discovery and you know that a couple more depositions will enable you to prove the other side is hiding evidence?

And you can't get away from the need to go against the crowd by becoming a business

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[1]Lindsay Young Distinguished Professor, University of Tennessee College of Law. I would like to thank my colleague Joan Heminway for her helpful comments. The opinions expressed are, of course, my own.

lawyer. As a business lawyer, you'll need to hold out for the best deal for your client when the people you're negotiating with accuse you of being stubborn, misinformed, or just stupid. Other times, it will be your client you'll have to stand up to. More often than you'd like to believe, clients will want you to do something unethical — or just unwise. So when your friends tell you not to volunteer so much in class, just say "screw you," and think of it as practice for dealing with clients. (Obviously, you have to be a little more tactful with clients–at least the ones who pay their bills on time.)

Reason Two: You'll Learn The Material Better

The professor calls on someone for an answer. They flub it. You sit there fat, dumb and happy, thinking you know it. But do you really know it as well as you think you do? Probably not. It's one thing to think you know the answer. It's another to be able to articulate an answer and defend it when the professor challenges it. If you answer questions in class, you'll discover the gaps in your knowledge, and you can fill them in before the exam. That's a lot better than filling them in after the exam.

Reason Three: You'll Help Your Classmates Learn

If nobody answers the professor's question, chances are the professor will answer it herself. A lot of professors (unlike judges and clients) are wimps that way. That, of course, is what a lot of your classmates want — the prof's canned answer. The people who want that are the people who aren't going to do well on the exam (or in practice). They came from undergraduate programs where all they had to do on the exam was vomit back the prof's words. They haven't picked up on the fact that law school is different. Law school teaches you to think. It does it subtlely, by exposing you every day to a myriad of little problems that you have to think your way through or that you can watch someone else think their way through. When you answer a question, the professor (if she's any good) isn't going to accept your answer uncritically. She's going to pick it apart. And as she does, the whole class gets to see the way a thoroughly trained legal mind (hers) deals with an issue and to contrast it with the way a mind whose training is only beginning (yours) deals with the same issue.

Even better than answering the professor's question is asking one of your own, especially if you don't just ask for a clarification but add a new twist to the problem. Then the class may get to see the prof deal with an issue she hasn't thought about. You'll get to watch her make an off-the-cuff analysis and then refine it, questioning her own reasoning as she goes.

Of course asking these kinds of questions will make you even more unpopular with your classmates. They don't want to hear this little excursion. They just want to hear what's going to be on the exam. What they don't realize is that many professors base their exam questions on the new issues that come up in class. Most of us have used up the mainstream issues on prior years' questions and we need something new. Besides, basing exam questions on issues that

come up in class is a nice way to reward the people who pay attention at these times when everyone else is IM'ing their friends about what a turkey the person who asked the question is.

Reason Four: It's Fun

Let's face it. It's boring to sit in class waiting for the professor to say something that might be on the exam. That's why you spend a lot of class time checking your e-mail, IM'ing your friends, playing Turkey Bingo and the like. Wouldn't it be more fun to use that time to sharpen your legal skills, especially if you could raise your grades and irritate your classmates at the same time?

Once you get over your inhibitions, you'll find that talking in class really is fun. After all (be honest now), don't those people you hate because they're always volunteering in class really seem like they're having more fun than you are.

Reason Five: It's Good Practice For What You'll Be Doing As A Lawyer

Everyone complains that law school isn't practical enough, that it doesn't give you practice in the skills you'll be using in the real world. But, what do you think lawyers do all day? They talk!! And very little of that talking is informal idle chit-chat. Nobody wants to pay $500 an hour for that. Most of what lawyers say is aimed at persuading people that the lawyer has the right position. It's convincing a judge you really need a continuance, selling opposing counsel on your settlement offer, charming a reluctant witness into giving an affidavit. If you're not a litigator, you're still spending most of your time talking to people, trying to persuade them. You're explaining to the other party's lawyer why that contract provision really is fair. You're convincing your client not to give up the protection you so carefully drafted into the contract. You're persuading the banker to loan your client the $6 million it needs instead of the $5.5 million she thinks is the max she can loan a company that size.

Then there's always the times when you'll have to speak persuasively to convince the client the bill is reasonable. It really did take 78.4 hours to get the deal done. Or you'll have to convince the senior partner that you really can take that vacation you've been looking forward to without all your cases falling apart and the clients firing the firm.

A lot of students tell me they don't like to talk in class because they don't like to talk in front of a group. They'll be fine in practice, they say, because they aren't going to be litigators. They won't have to talk in court.

The problem is that as a non-litigator, you *are* going to have to speak to groups of people. And most of the time it won't be formal presentations that you have time to prepare for. Most of the time it will be just like in class. Someone will ask for your analysis of a legal issue that you

may or may not have had time to think about. And if you feel like you're under pressure in class, it's nothing compared to the way you'll feel in practice. If you screw up in class, the consequences are minimal. You may be embarrassed, but your classmates probably won't think less of you for it, and if they do, who cares? The professor isn't going to hold it against you unless your answer shows pretty clearly that you weren't prepared.

It's not like that in practice. You'll be in a meeting to hammer out the terms of a merger agreement. The top officers of the client will be these along with the client's inside general counsel. There will be some other lawyers from your firm, including, because this is a big meeting, one of the senior partners. And, of course, the other side will have a team that's just as big. Then there will be the two teams of investment bankers, one representing each of the merger partners. The commercial banks that finance the corporations will be there, too. And the investment bankers and the commercial bankers will have their lawyers.

With all of these people, there won't be room for you at the conference table, so you'll take a seat in a corner of the room, which is right where you want to be--out of the way and hidden. After all, your job is to take notes and to be available to run errands, find documents in the file and things like that. You've been told that you were brought to the meeting primarily so you could listen and learn how deals of this sort are really done.

After the meeting has been going on a while, and you're beginning to get comfortable in the company of all this wealth and power, someone asks the senior partner a question and she responds: "Jonathan drafted the provision that covers that. He can explain why your suggestion won't work." *You're on the air!*

In this situation, there are a lot of factors that will determine whether you perform well and see your career prospects improve or whether you flub it and spend the evening mailing out resumes. Not the least of these factors is whether you have practiced performing in clutch situations like this. There's no better practice than volunteering in class. You're not only speaking in front of a group; you're giving an impromptu analysis of a legal issue. And if you're lucky, when you practice in class, your professor is going to challenge your analysis just like people will do in practice (although most of the people you'll run into in practice won't be as gentle on you as your professor).[2]

Reason Six: It Will Get You A Job

Being a gunner won't get you a job in and of itself. But it's a big help. And sometimes not being a gunner can cost a person a job. I hate it when I'm asked about a candidate for a job and I have to say: "He seems nice enough, but I don't really know him. When I called on him in

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[2]If you're not lucky, you'll have one of those professors who tries to build your self-esteem by treating everything you say as pure gold, even when your analysis has a serious flaw. Clients, judges and senior partners can't afford to make the same mistake.

class, he seemed prepared. But it was a big class, and he didn't volunteer, so I don't know much about him." That doesn't leave the potential employer with a lot of confidence. The impression is of someone who does the minimum it takes to get by. It may very well be that this person is conscientious and hard-working. He reads the assignment carefully. Then he comes to class, listens carefully to everything that is said, and goes home to re-read the material and think about it some more. But unless the candidate has spectacular grades, the employer isn't going to take the chance. Not when there are people about whom I can say without perjuring myself too badly, "I remember Jennifer. She always had something to say about the material. Very engaged. Always wanted to look at things from a different point of view."

The same is true when you need a letter of recommendation. There are professors who will write a glowing recommendation for anybody who asks. (You may have used a letter from one of these people to get into law school.) But potential employers know who those people are. Even if they don't recognize your recommender as one of those, they can usually spot their letters.