

Book Review



Reviewed by Richard A. Forsten, Esquire

In The Cards: Lawyers' Poker, 52 Lessons that Lawyers Can Learn from Card Players

by Steven Lubet (Oxford Univ. Press, 2006)

Law and poker have much in common, as Professor Steven Lubet demonstrates in *Lawyers' Poker, 52 Lessons That Lawyers Can Learn From Card Players*. Before making this demonstration, though, Lubet starts with an apocryphal tale:

"A young lawyer moved from the Indian Territories (now Oklahoma) to Texas, in the early spring of 1888. Eager to get started, he rented a small office and put his shingle on the door, but he still had to be admitted to practice. There were few law schools in those days, and there was no formal bar exam. Instead, each aspiring lawyer, whether a youngster or a newcomer, had to appear for a personal interview before the Texas Supreme Court.

"Our young man made his way to Austin, apprehensive but ready for what he expected to be a rigorous examination by the notoriously hard-nosed justices. Surprisingly, however, they asked him only four questions: Had he studied Blackstone? Did he read the Bible? Did he know his Shakespeare? And could he play poker?

"The first three questions were easy to understand. Blackstone's *Commentaries* was the basic reference book for lawyers everywhere; and on the frontier it was often just about the only source available. The Bible and Shakespeare, of course, were essential to understanding human nature, a necessary quality for successful law practice (then as now). But, the poker question made him nervous. Gambling was a vice, so he was worried that the justices were accusing him of immoral conduct.

"Still, he had to answer honestly. The lawyer reluctantly admitted that he was a more-than-occasional seven-card stud player, fearful that this might disqualify him in the eyes of the Texas justices. To his relief, however, they admitted him to practice on the spot.

"Once he was safely sworn in, the young lawyer got up the nerve to ask the court about the poker questions. 'Your Honors,' he said, 'I know why you inquired about Blackstone, Shakespeare, and the Bible, but what on earth does poker have to do with the practice of law?

"The chief justice looked down from the bench and sternly replied, 'Young man, how else do you expect to make a living during your first three years as a lawyer?'"

While the chief justice's reply may bring a smile (or even a laugh), there is much more truth in that reply than may appear on the surface. Poker and the practice of law (particularly litigation) have much in common—primarily competitive decision-making with incomplete information. Call, fold, or raise? Lawyers, like poker players, must make a constant series of decisions based on both known and unknown information. How strong is the other side's case? Who will the jury believe? Is the other side willing to go to trial? Is the other side willing to go higher, or should you accept the terms offered?

Lubet posits that through the study of poker, one can become a better lawyer. He offers fifty-two short lessons drawn from various poker situations, each designed to make a simple point applicable to the

practice of law. His stories not only illuminate the law, but they might also help the next time you're playing cards.

Lubet divides his lessons into four categories (each corresponding to a suit), and in turn divides each category into thirteen lessons (each corresponding to a card in the suit). The four categories are: maximizing your winnings (diamonds), controlling the opposition (clubs), digging for information (spades), and ethics and character (hearts). Some of the lessons presented seem like clichés, but as the old saw goes, something is usually a cliché because it's true, and Lubet presents all of his lessons in such an entertaining way, that even the most obvious points are enjoyable.

The "chapter" on "maximizing your winnings" has many of the lessons one might expect. You have to know when to hold'em and know when to fold'em—but the larger lesson is that successful poker is played based on the odds over the long run. Sometimes a player may get lucky, so to speak, when he draws to an improbable winning hand, but the surer play over the long run is to fold. So it is in litigation.

In the lesson entitled "Depend on the Rabbit's Foot If You Will, but Remember It Didn't Work for the Rabbit," Lubet demonstrates that success (or failure) doesn't depend so much on "luck" as it does on preparation and good strategy. Most lawyers remember the rule of not asking a witness to explain an inconsistency on cross-examination, and letting the inconsistency speak for itself or saving the inconsistency for closing. Others, though, can't resist and ask for

an explanation (only to be disappointed by the answer and to see their opportunity vanish). Occasionally, a witness may make things worse with a convoluted, credibility-destroying “explanation,” and, unfortunately, the lawyer will probably learn the wrong lesson from this exchange thinking that his excellent skills lead to a winning cross-examination. So too, in poker, when a player stays in a hand he should fold, only to draw to a winning hand at the end, that strategy may work occasionally, but is a sure bet to lose money in the long run.

Each of Lubet’s lessons includes an example from poker. In the lesson entitled “Folding Winners,” Lubet again stresses the crucial role of discipline to successful poker and successful lawyering. He recounts a story about a high stakes game of Texas Hold’em in Las Vegas where Doyle Brunson, a two-time winner of the world series of poker, folded a pocket pair of aces. Brunson bet big before the flop, and the two other players both stayed in. An ace, deuce, and four (all from different suits) were then turned over, giving Brunson the highest hand possible (three aces) and he bet \$25,000. Both of the other players stayed in. The next card turned over was another deuce (giving Brunson a full house of aces over twos), but Brunson decided to check. Surprisingly, the next player made a large bet, and the third player then moved “all in,” making the total bet to Brunson \$100,000. After a long moment’s hesitation, Brunson folded. The final card was a four. Both of the other players ended up with four of a kind—and four fours beat four twos. Lubet further explains:

“When Brunson bet big before the flop, [the other players] would have read him for a high pair in the hole. . . . So they would have had to have pairs in their hands to call him. And when he bet again strongly after the flop, what else could either of them have called him with except trips? So when the board paired, Brunson knew one of the them must have made quads. Even so, it took exceptionally iron discipline and cold-eyed calculation to fold his massive hand [Brunson was holding a full house]. Brunson lost

more than \$30,000 on that hand, but he saved himself a further \$100,000 by folding. . . . The same rule applies to lawyers, though not always on quite so grand a scale. At the simplest level, you must be willing to abandon a line of questioning—no matter how powerful it once seemed—as soon as you realize that it may be counterproductive. You might have some dynamite impeaching evidence on a witness, say a prior felony conviction or an embarrassing personal indiscretion, that you cannot wait to use on cross-examination. But, if the witness turns out to be especially dignified and respectable during direct examination, clearly earning the jury’s sympathy, you will need to consider ‘folding’ that particular winner lest you alienate the jurors by appearing inappropriately disrespectful or unnecessarily rude.”

Throughout his book, Lubet makes his points with both examples from the world of poker, as well as, examples from trial cases and other legal situations. One need not know how to play Texas Hold’em or poker in general in order to

understand or gain insight from Lubet’s work. Indeed, Lubet does an excellent job of introducing poker to the novice, even as he fascinates the experienced player. Any book which includes references to movies such as *My Cousin Vinny*, *The Hustler*, and *Rounders* should be commended, and *Lawyer’s Poker* may end up teaching the reader as much about poker as it does about the law. There is something for everyone to learn in this book. ☞



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