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## Letters to a young lawyer

David Spencer

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## Book review

# Letters to a young lawyer

**David Spencer**

**Alan Dershowitz,  
*Letters to a young lawyer*,  
New York, Basic Books, 2001**

If you are a lawyer, or in the business of talking to lawyers, and you have not read a book by Harvard don Alan Dershowitz then, 'shame on you'. Not only are they insightful of the criminal justice system but they are a damn fine entertaining read. Further, Dershowitz never fails to give some commentary on the ethical dimensions of a lawyer's work. I have only read a few of his 21 books, this book *Letters to a young lawyer* being his 22nd, and I have always finished the books I have read pondering the ethical quandaries that he is frequently confronted with and how best to handle them.

*Letters to a young a lawyer* may be a capstone book – not that I expect

Dershowitz to put down his pen or keyboard, as the case may be – because it is a book that is an interesting collection of advice both received and given over what can only be described as an extraordinary legal career. I suggest it is a capstone book because, first, Dershowitz is still enthused by the law as this book clearly shows, and secondly, he still has more to say based on the continuing injustices perpetrated by humans against humans and his engagement in those injustices. In this respect it draws together the wisdom of a brilliant criminal lawyer, gifted teacher, parent and humanitarian.

The book is divided into three sections, namely: life and career; winning and losing; and being a good person. Dershowitz starts with a warning about picking your heroes carefully. He asks young lawyers to look

up to people with admirable traits but to understand that in making your selection all people have human foibles. He maintains that the law has a habit of highlighting those foibles – the law is imperfect because success rarely comes without sacrificing principle. Dershowitz also warns against loving 'the Law' by reminding us that 'the Law' is merely a process, a group of people, some ideas and some books. Love it and it will disappoint you is the warning from this street-wise lawyer. Further, it should not be respected unless it merits respect – to support this proposition he asks, 'Should the law in Nazi Germany or in apartheid South Africa have been respected?'

Dershowitz seeks to answer the age old question, 'Should good lawyers defend bad people' by suggesting that commentators of the law should not equate lawyers with their clients. In the



end, for civil liberties to prevail the law cannot be split along ideological lines – all accused are entitled to a spirited defence without fear or favour in order to preserve the rule of law. Dershowitz reminds us (at p-51) that:

Those of us who opposed efforts by the town of Skokie to censor Nazis did not sympathize with the Nazis; we opposed censorship even of the most despicable and false ideas.

Given that Dershowitz is a criminal lawyer there are not many references to dispute resolution which tends to be practiced mainly in the civil jurisdiction. However, in chapter 33 entitled ‘Can a good lawyer be a good person’, Dershowitz asserts that lawyers who deserve praise for defending the disenfranchised are often unjustly vilified while lawyers who deserve vilification are unjustly honoured. He uses as an example lawyers acting for the tobacco industry who do, in his words, ‘dishonourable work’. His view is that this sort of lawyering lacks social utility.

Dershowitz warns that the frequent attacks on lawyers are orchestrated by business interests that have the most to lose from increased levels of litigation. He states unequivocally that losing the right to litigate will disenfranchise those in most need of the protection of the courts. However, he suggests a solution to the current prohibitive environment of litigation (at p-175):

There are important steps that can and should be taken to reduce the expenses, abuses, misuses and excesses of the present system. More efficient and less expensive and time-consuming methods of alternative dispute resolution should be introduced. The contingency fee should be regulated so as not to permit windfalls to plaintiffs’ lawyers in open-and-shut cases. Sanctions should be permitted for, but limited to, cases that are brought or defended for harassment purposes, with no realistic expectation of prevailing on the merits.

Dershowitz gives plenty of advice to law students and recent graduates but his message is a universal one that applies to all people whether they are young or old, lawyers or non-lawyers and it is best summed up in his final

chapter entitled, ‘Why be a good person’. His religious analogies are short and to the point and provide an answer that is preached in the churches, mosques and synagogues around the world each week. However, he asks the question that transcends religious doctrine, ‘But what about atheists, agnostics or other individuals who make moral decisions without regard to any God or any promise or threat of the hereafter? Why should such people be moral? Why should they not simply do what is best for them?’ A question for the ages!

Here’s the answer – lawyers take note!

Dershowitz suggests that a truly moral person is the one who does the right thing without any promise of reward or threat of punishment or without engaging in a cost-benefit analysis. He affirms (at pp-198-9):

Doing something because God has said to do it does not make a person moral: It merely tells us that person is a prudential believer, akin to the person who obeys the command of an all-powerful secular king ... I am reminded of the cartoon depicting an older married man marooned on a deserted island with a younger woman. He asks her to have sex, arguing, ‘No one would ever know.’ The woman responds, ‘I would know.’ The ‘I would know’ test of good character is a useful one.

*Letters to a young lawyer* is peppered with examples from Dershowitz’s magnificent legal and academic career and the wisdom he imparts in this book is drawn from case examples and his reflective thought on where he fits into the global community. At the conclusion of reading *Letters to a young lawyer* you should be able to take a number of philosophical and ethical lessons. However, if you do not learn anything from Dershowitz’s writing do not fret – it is still worth reading his latest offering because it is written with his usual flair and colour and on that basis alone it is a fun book to read. ❖

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## diary and happenings

- The **Court of Appeal Mediation Pilot Scheme** has had funds made available through the Attorney-General's Department to subsidise the cost of mediations in the Court of Appeal. The funds are to be expended before 15 June 2006. The Registrar of the Court of Appeal will, at Directions Hearings, choose cases which he regards as suitable and offer the parties the opportunity to participate in the Mediation Pilot Scheme. For information sheets and forms visit [www.lawlink.nsw.gov.au/lawlink/supreme\\_court/ll\\_sc.nsf/pages/SCO\\_camediation](http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/SCO_camediation).
- An ACR-approved 40 hour divorce mediation course '**Mediating Divorce Agreement**' will take place 12–16 April in Eugene, Oregon. Enrolment is limited. Complete information and registration is at [www.smartmediator.com](http://www.smartmediator.com).
- The **3rd Asia Pacific Mediation Forum Conference** will be held from 26–30 June 2006, convened by the University of the South Pacific and held at the University of the South Pacific, Suva, Fiji. The theme for the conference is '**Mediating Cultures in the Pacific and Asia**'. It will seek to explore the diverse ways mediation takes place throughout the varying social and legal systems in the Asia Pacific region. For full conference information, see [www.usp.ac.fj/apmf](http://www.usp.ac.fj/apmf).
- The 8th **National Mediation Conference** entitled **No mediator is an island: Celebrating Difference-learning from each other** will be held in Hobart, Tasmania from 3–5 May 2006. If you would like further information on presenting or attending see [www.mediationconference.com.au](http://www.mediationconference.com.au).
- **ACDC** is holding a one day course aimed at those who handle complaints in organisations, entitled **Complaint Handling – A Complaint is a Gift**. The workshop aims to give participants an understanding of the importance of active listening, suspending judgment and the use of appropriate body language and eye contact. Summarising, clarifying and paraphrasing may also be explored. The course is being held in Sydney on 19 April 2006. For more information on ACDC courses see [www.acdcltd.com.au](http://www.acdcltd.com.au).
- **ACDC** is also holding a one day workshop for Executive Officers; Compliance and Risk Managers; Human Resources Managers; Internal Auditors; Systems Designers; Policy Developers and Complaints Managers entitled **Conflict and Dispute Management Systems**. The workshop aims to give participants an understanding of various ADR processes and their application within organisations. The course will be held in Sydney on 26 April 2006.
- **ACDC** is also holding **Stage 1–3 Certificate Courses**. **Stage 1 Accreditation Courses** are being held in Sydney on 22 March and 3 May 2006. **Stage 2 Accreditation Courses** are being held in Sydney in March 2006. The available categories include Workplace Mediation, Local Government Mediation, Family Mediation and Conciliation. **Stage 3 Accreditation Courses** are being held in Sydney in March and June 2006.
- **CEDR** is holding three **Mediation Skills Training Courses**. Fast Track courses (five consecutive days with a weekend break in-between) will be held on 17–19 and 22–23 May 2006 in London, UK. A residential course held outside of London will take place from 20–26 April. If you would like to book a place or find out more about the course, contact the training team, +44 (0)20 7536 6000, email [training@cedr.co.uk](mailto:training@cedr.co.uk).
- The **Trillium Group** is conducting **4-day ADR Workshops** in Melbourne, Brisbane and Sydney in early 2006. The workshops aim to teach participants how to use principled negotiation and how to mediate disputes. To register or for more information, visit [www.thetrilliumgroup.com.au](http://www.thetrilliumgroup.com.au) or call 1 800 636 869 toll free or 02 9036 0333.
- The **Professional Certificate in Arbitration** is being offered as a joint venture between the **Institute of Arbitrators and Mediators Australia** and the **University of Adelaide**. This course aims to qualify skilled practitioners in the field of arbitration. It will provide an appreciation and understanding of the role of Arbitration, the process and the legislative framework. The course is designed for completion in two parts over two University semesters. Tuesday evening classes are offered in several Australian capital cities. The course is also available as an Online Learning Program. The qualification of Professional Certificate in Arbitration, awarded by the University of Adelaide, will be granted on completion of the required components of both courses. The course is appropriate for those practising law, medicine, and other disciplines who are interested in improving their knowledge and understanding of the legal principles, tools and techniques of Arbitration. The **General Course** is being held on 19–20 May 2006 and the **Advanced Course** will be held on 15–16 September 2006. If you would like to book a place or find out more about the course, contact 08 8303 4777 or visit [www.adelaide.edu.au/arbitration/course/](http://www.adelaide.edu.au/arbitration/course/).
- The **Bond University Dispute Resolution Centre** in conjunction with the **Leo Cussen Institute** is holding a 4-day workshop-style **Advanced Mediation Course** on 30-March–2 April. A 4-day workshop-style **Basic Mediation Course** will be held on 12–15 October. Both courses will take place in Melbourne. For more information, phone 03 9602 3111 or email [lpd@leocussen.vic.edu.au](mailto:lpd@leocussen.vic.edu.au).
- The **Bond University Dispute Resolution Centre** will also be conducting independent **Basic Mediation Courses** and **Advanced Mediation Courses**. Both



## diary and happenings

courses also have a Foundation Family Mediation stream, run in conjunction with **AIFLAM** (Australian Institute of Family Law Arbitrators and Mediators.) 4-day workshop style **Basic Mediation Courses** will be held on the Gold Coast on 6–9 April, 27–30 July, and 30 November–3 December. A 4-day **Advanced Mediation Course** will be held in Noosa on 21–24 September. For more information email [drc@bond.edu.au](mailto:drc@bond.edu.au) or visit [www.bond.edu.au/law/centres](http://www.bond.edu.au/law/centres).

- **ACPACS** is offering several courses in 2006. An approved Queensland Law Society training course on **Mediation** will be offered as an intensive 4-day workshop. Participants will learn and practise the process, principles, skills and interventions used by professional mediators as well as the role of mediation practice in Australia. An **Advanced Mediation Course** designed for participants who have completed basic mediation training and have some dispute resolution experience will also be offered. The course is taught as an intensive 2-day workshop. A one day intensive **Cross-cultural mediation seminar** will also be offered. This course is designed for participants who have completed basic mediation training and have some dispute resolution experience. Topics may include working with the cultures of the mediator, exploring current theories of cross cultural mediation, communication issues, worldview and mediation and cross cultural issues and power. For more information, please contact 07 3346 9964 or 07 3346 8742 or email: [mediate@uq.edu.au](mailto:mediate@uq.edu.au).
- **MATA** is holding a six day **Advanced Mediator Course** in the UK in September 2006. This residential course is designed to develop and deepen the skills of mediators who already have experience in mediating commercial disputes. It is open to all mediators, whether lawyers or not, and experience is more important than qualification. The course builds on the foundation skills and processes of civil and commercial mediation.
- The **Association of Family and Conciliation Courts** is holding its **43rd Annual Conference** entitled '**Juggling Conflicts, Crises and Clients in Family Court**' in Tampa Bay, Florida from 31 May–3 June 2006. For more information, visit [www.afccnet.org](http://www.afccnet.org).
- The **Strauss Institute for Dispute Resolution** in Irvine, California is holding a course entitled **Mediating the Litigated Case**. The 6-day program for experienced litigators, in-house counsel and other practitioners focuses on the various stages of the mediation process, identifying and working with different negotiation styles, and facilitating problem solving regardless of whether the case involves contractual, tort, personal injury, employment, partnership, or securities issues. In addition to providing mediation skills training, the program will deal with issues specific to the adversarial setting including managing attorney advocates, the parameters of confidentiality, and concerns about discovery. It will also focus on issues of particular concern to lawyer-mediators including the proscription against dual representation, providing legal advice, conflicts of interest, drafting mediation agreements, and other ethical dilemmas. The program is being held on 16–17 March, and 20–21 April, 2006. For more information or to register online, visit <http://law.pepperdine.edu/strauss/>.
- **CEDR Solve**, the independent mediation service of the not-for-profit Centre for Effective Dispute Resolution, has announced at the start of 2006 its largest intake of new mediators. Of the 28 new mediators 22 were trained as lawyers with a further 14 still practising law. The rest have gone on to other careers and specialisations. Six of the lawyers are barristers, one being a QC, and four lawyers are the heads of departments in law firms. Other professions include Insurance, Accountancy, Surveying, Human Resources, Property and Construction. The intake includes Sir David Edward KCMG, QC, a former Judge of the European Court of Justice and now a deputy judge of the Court of Session in Scotland hearing civil appeals, and Colin Wall, the new President of the Chartered Institute of Arbitrators, based in Hong Kong.

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