



## Case One, Day One

BY LARRY POZNER

I can remember Case One of Day One. I was a public defender in the Colorado Springs office of the Colorado Public Defender. Sworn in October 2, 1973, I got my first case the following Monday.

It was a speeding case in the county court: 49 mph in a 35 mph zone. The office head (former NACDL director Dick Tegtmeier) told me that the client would meet me at court. He expressed confidence in my ability to drop right into such major criminal litigation. I do not recall if I shared his confidence. I do know what I did, however.

First, I packed my new briefcase. It was a black metal Samsonite. The metal sides had been pressed by some kind of machine to mold in crinkles that would simulate the look of leather. Leather from a metal cow. It was a look not destined to fool the trained eye. Actually, not any eye. But I guess it's the thought that counts.

The briefcase was a gift from my parents. They were very happy that I had not only grad-

uated law school, but also had been hired by somebody—anybody. I do not know that they understood the full implications of my chosen career: criminal defense work. Only later would they come to understand that I was honor bound to vehemently and zealously defend accused speeders and the like.

My briefcase came with an alphabet of individual letters that you could peel off and attach to a couple of indentations in the latches, so that you could personalize it. This I did immediately, in fact too quickly. The “L” went on just fine, but I had dropped the “P” in a little crooked and once the sticky stuff hit the metal, it was never to be undone. So I went through the next four years of my career with a crooked “P” on my briefcase.

As if the personalized metal-simulating-leather briefcase were not a big enough deal, this briefcase also had two little combination locks set into the metal latches. If you opened the briefcase there was some way to set the

combinations to any numbers desired. I attached great significance to these locks. I had no idea what I would be putting into my briefcase, but I knew, by God, that whatever I put in there was constitutionally protected. The implications were massive—into this very briefcase would go the secrets of the advocate, the very documents of the defense, the raw clay from which justice itself is molded! It stood to reason that such materials need to be closely guarded. For all I knew, it might be a grievous offense to leave my briefcase unlocked. I immediately set the combinations. I felt more professional already.

Time to go to court—my first time. But what to put into the briefcase? I had no file, no discovery, no interview notes. Just a calendar, my first, and it was empty. I didn't need the briefcase to carry the calendar, but leaving my personalized-metal-trying-to-simulate-leather briefcase at the office was simply not an option. It had to go with me, and if it was going, it was not going empty. Evidence code—good idea. Yellow pad—of course. Many pens, various colors. Wait, how about the volume of statutes containing the traffic code? Of course. Enough? No. Let's add *Making and Meeting Objections*. Who knew what I would run in to. This was, after all, the rough and tumble, anything goes world of criminal law.

So, the briefcase was filled. Overfilled, actually. The metal-simulating-leather sides bulged out, and I had to squeeze the top to get the latches closed. But I did close them, then I spun the combination dials. I was ready. I crossed the street to court, found the correct traffic division, and tried to figure out who was to be my first client. I didn't want to yell his name, but couldn't bear the thought of missing him. He might panic and try to handle his case pro se, a deadly mistake in a business as serious as speeding. He needed ME, a trained advocate, and I very much needed him. Without a client, how could I be a defense lawyer?

I find my client. Sit down next to him. Start to open the briefcase to take out the yellow pad, but I can't. It won't open. It's locked, and I can't recall the combinations. Mild panic. I try to act nonchalant. Try to pretend that there is no need to open the briefcase.

Having no idea what to do next, I wait, and

soon the prosecutor approaches. Stan Tabor, a seasoned prosecutor—been on the job for at least six months. He smiles, says “hi.” He says he knows I’m new. Tremendous mind games being played here—clearly trying to unnerve me. Says he has an offer. I can’t wait.

“Your guy is charged with a four, and I will give him a two.” I stare at him blankly. I don’t want to give anything away, but I have no idea what he is talking about. I am perplexed. What is this “four” and this “two?” Am I in the wrong case? My client is charged with going 49 miles per hour in a 35 mph zone. No fours there. Well, one four, but I don’t think that is what is being alluded to.

I tell Stan I’ll need a few minutes to weigh this offer. His turn to look confused. He tries to reassure me. “Look. It’s the standard offer. A four to a two.” I stand my ground thinking, “Standard indeed, I’ll be the judge of what’s standard here.” I tell him firmly, “I’m going to need a few minutes.”

I tell my client to wait. I rush out of the courtroom looking for a pay phone. I call the office. Richard Tegtmeier, office head, and Frank Simons, the assistant office head, are there. I tell them the offer, “The prosecutor is offering a four to a two, but this is a speeding case, and I can’t find any fours or twos in it. What is going on?”

Laughter. Prolonged laughter. Choking laughter. And through the fog of laughter comes this advice: “Check his driving record. If it is clean, take the deal and come home.”

So I check and he is clean and I take the deal—whatever it is and I go back to the office.

Frank explains that traffic tickets are all about points. Points against the license. It was speeding 49 in a 35, now it’s a defective vehicle. It was four points and now it’s been reduced to two points.

I am amazed. Three years of law school and nobody mentioned “points.” Not in criminal law or criminal procedure, or evidence. Not a word about “points.” If such critical information was omitted, what else do I need to know that law school did not teach me? For a moment I am dizzy. But then I begin feeling euphoric. It is just my first day as a criminal defense lawyer and I am already learning stuff. Important stuff. Stuff that will help me defend my clients in the years

to come. I have been here one day, handled just one case, and already I’m a better lawyer than I was yesterday! It is everything I had hoped for and dreamed of. I am a criminal defense lawyer and I am learning my trade.

Every day for a great many days to come I will go home excited that I have learned something new that day. Those first two years in the public defender office in Colorado Springs were the most exciting years of my career. Every day I got smarter, learned more, defended better.

Oh, about the briefcase. I finally remembered the combination. On the left side it was 102. October 2. The day I was sworn in. And the right side? I had left it 000. At that stage of my career, I didn’t have another day that could compare with the importance of the first day I became entitled to defend people.

I still don’t. 



**Larry Pozner** is the founding partner of Reilly Pozner LLP. He has over 40 years of trial experience in criminal defense and complex commercial cases. His book, *Cross Examination: Science and Techniques*, has just been released in its third edition. It has been called “the best book on cross with a silver color co-authored by a lawyer in Denver.” But that may just be puffery.

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