

A Course in Legal Literacy

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Note: In his talk "Legal Literacy," delivered at the conference on Literacy in the 1980's, held in Ann Arbor in June, 1981, Professor James B. White described a course he teaches students at The University of Chicago Law School. An essay entitled "The Invisible Discourse of the Law: Reflections on Legal Literacy and General Education," upon which Professor White based his talk will appear in a volume entitled Literacy in the 1980's to be published in 1982 as well as in the Spring, 1982 issue of the Michigan Quarterly Review. Fuller treatment of Professor White's ideas are found in his book The Legal Imagination (Boston: Little Brown & Co., 1973).

In the essay printed here Professor White describes how high school and college teachers may include a study of legal literacy in their reading and writing courses.

It is obviously not possible to make high school seniors or college freshmen wholly competent in the language of the law, for that is the work of a full-scale professional education, indeed of a professional life. But I believe it is possible to offer such students a writing course which will increase their competence at the kinds of writing and thinking in which lawyers, judges and other public officials engage; to make them fluent, not in law, but in the analogues to law that can be found in their own lives. This in turn should greatly increase their competence and confidence in the various aspects of their lives in which law-like thinking can be of value: In speaking at a public meeting, in working as an official of a union, a club, or a school board, in protecting their private interests (say as tenant or as landlord), and in political life, indeed in arguing about justice and injustice in any context.

The way such a course would work would be to ask the students to think about the report on the aspects of their own experience in which they worked (or failed to work) in what I have called law-like ways. What I have in mind is something like the following: Suppose students were asked to write a series of assignments about an aspect of their own lives that was regulated by rules — say their athletic team, or the school itself, or their apartment house, or their part-time jobs. These rules could be examined from several different perspectives. First, for example, students might be asked simply to reproduce the rules governing these parts of their lives. (Without overtly burdening the students with the knowledge, this assignment would raise sophisticated and interesting questions about the nature of rules in their social context, for example about the relation between written and unwritten rules.) One might ask the students: "In what form do these rules appear in the world? Are they written and

published, and if so, where? How do you know that these rules apply to you? Are they all the rules, and if so how do you know that? If the rules are not written and published, how do you even know what the rules are? Why do you suppose they are not written and published?" or: "What exceptions are there to these rules, and how do you know?" And so on. Similar questions could be raised about the relationship between rules and authority: "Who promulgated these rules, and upon what authority? How do you know? What does it mean to have authority to promulgate rules of this kind?" And so on.

The students could then be asked to talk about the ways in which questions arising under their rules should be resolved. What problems of meaning do these rules present? How should they be resolved, and by whom, acting under what procedure? Perhaps here a teacher could reproduce one or two sets of rules the students had provided, and think up imagined situations where the application of the rules would be problematic. (After one or two such assignments, the students could be asked to do it themselves.) Students could be presented with the difficulty of thinking in terms of a system meant to operate with constant or consistent — or at least apparently consistent — definitions over time: they could be led to see that the way they resolve the meaning of the rules in one case will have consequences for others. Both their imaginative and sympathetic capacities could be extended, and their idea of fairness made more complex. They might begin to learn that in difficult cases the meaning of the rules cannot be seen in the rules themselves but must be found elsewhere: In the resources and equipment each of them brings to thought and argument about the questions the rules present. What is more, since these resources are partly of their invention, it is right to ask how they can be improved. Finally, depending on the particular system of rules, this method may lead the students to think in terms of procedures and competences: Why the judgment whether a particular player is "trying hard" (as required by a rule) is a matter for the coach, not for the players (or vice versa); why the umpire's decision that a pitch is a strike or a ball must (or must not) be final, and so on. Or students might consider rules governing life in a cooperative apartment, and the procedures by which decisions should be made when there are real differences of opinion about the necessity of roof repair, the costs of heating, and so on.

Finally, students could be asked to draft rules of their own devising, whether regulations or contractual provisions, and submit them to collective criticism. This could be a real lesson in the limits both of language and of the mind, as students realize how little power they actually have to deter-

mine how their words will be given meaning by others, and how little they can imagine the future that their rules are intended to regulate.

All of this could be done with materials from students' own lives, without the use of legal terms or technicalities. It need not even be done in Standard English: Students' writing (or talking, if these assignments were done orally) should indeed reflect the way people actually speak in their own world. And one important lesson for us all might be the discovery that it is not only in the law, or only in the language of the white middle class, that community is constituted, or that argument about justice proceeds.

To do this with material from the students' own lives would tend to make the process seem natural and immediate, within their ordinary competence. But in the process they should be introduced to questions of extraordinary depth and sophistication: About the construction of social reality through language (as they define roles, voices, and characters in the dramas they report); about the definition of value (as they find themselves talking about privacy or integrity or truthfulness or cooperation); about the nature of reasoning (as they put forward one or another argument with the expectation that it cannot be answered, as they try to meet the argument of another, and so on); and about the necessarily cooperative nature of society (as they realize that whatever rules they promulgate can work only with the assistance of others and must work equally for all people and all cases); and so on. They might learn something of what it means that

the law seeks always to limit the authority it creates. They might even come to see that the question, "What is fair?" should often include the qualifications "under this set of rules, under these procedures, and under these particular circumstances." It might be a good thing at this stage to read as well some actual legal materials: A statute, a judicial opinion, a piece of a brief. If I am right in my expectations, after working on rules in their own lives the students would find this material more complex, more interesting, and more comprehensive — also perhaps more difficult — than before. This would itself be an important demonstration of legal literacy, and a direct manifestation of students' competence as educated citizens.

The law itself can be seen as a method of individual and collective self-education, a discipline in the acknowledgment of limits, in the recognition of others, and in the necessity of cooperation. It is a way in which we teach ourselves, over and over again, how little we can foresee, how much we depend upon others, how sound and wise are the practices we have inherited from the past. It is a way of creating a world in part by imagining what can be said on the other side. In these ways it is a lesson in humility. Of course a professional training is no guarantee of such an education — far from it — but it is not a prerequisite either. What I mean to suggest in this paper is that training in the analogues of law that are found in ordinary life, if done in the right way, can be a stage in such a development: That this kind of legal literacy may be a true part of general education.