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## Book Review [The Legal Imagination]

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## BOOK REVIEW

**The Legal Imagination.** Abridged Ed. James Boyd White. Chicago: University of Chicago Press. 1985. Pp. 302 Soft Cover.

*Reviewed by Harriet Bearman Wolf\**

This is an unusual law book written by an individual who is a law professor, a professor of English language and literature, and an adjunct professor of classical studies at the University of Michigan. James Boyd White's interest in multiple disciplines may account for the book's diverse selections from works of Frost, Twain, Conrad, Thoreau, Melville, Proust, Chaucer, Shakespeare, Lawrence, Donne, Dickens, Tolstoy, Mailer and others. These selections are used to demonstrate how one's profession or interests affect one's language, how language is manipulated and controlled by writers, and how lawyers and judges may improve their use of language.

White begins the book by showing how a single locale, the Mississippi River, is utilized and described differently by three authors to reflect their unique background or subject emphasis: Twain compares the river pilot's view of a sunset on the river to that of the uninitiated; Dicken's view of the sunset discloses that of a finicky traveler; and Parkman completely ignores ascetic impressions in favor of recreating and commenting on the historic moment when La Salle claimed the Mississippi Valley and Louisiana for France. White then applies to lawyers the thesis that a single language is utilized in unique ways by different interest groups. For example, White compares judicial opinions dealing with the issue of death with selections on the same topic written by nonlawyers, in a section whimsically entitled "A Comparative Anthology on Death."

Methods of portraying people are explored by use of selections from nonlegal literature and then by examining selections from the law—in this case, legal literature that attempts to define insanity in criminal cases. From the selections, the author draws the conclusion that the existing legal statements of the insanity defense all talk

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about people as caricatures, not characters.

The practical emphasis in this book is on how to write well. The author's view of the limitations of the legal language system is emphatically presented. White describes it as a system of rules which operates:

. . . by reducing what can be said about experience to a series of questions cast in terms of legal conclusions ('legal issues') which must be answered simply 'yes' or 'no'; it maintains a false pretense that it can be used as a language of description or naming when in fact it calls for a process of complex judgment, to which it seems to give no directions whatever; its terms are given (or appear to be given) rigidly uniform meanings of a kind radically inconsistent with the conventions of ordinary speech; and its crucial terms are almost always imperfect generalities. (pp. 112-13)

The legal language system speaks "in a set of official voices, reducing people to institutional identities, insisting on the repetition of inherited patterns of thought and speech . . . and reposing an impossible confidence in its fictional pretenses." (p. 208)

The selections in the book are used to illustrate and explain techniques and styles of writing. A section in the book, for example, defines metaphor, irony and ambiguity and contains selections exemplifying the use of these techniques. With respect to these selections, the author explains that the legal writer may learn from them to assert:

. . . control over a language by taking a position outside it, from which he may use it to say, or at least to recognize, more than the language in other hands would be made to say, more than it seems to want to say, something new and different. The writer, that is, speaks two ways at once: using a language and at the same time recognizing what it leaves out. He is defined less by the language he uses than by the relationship with it that he can establish and maintain less by his material than by his art. (p. 71)

The discussion and examples of characterization are for the purpose of elucidating that no matter what literary resources are available to the writer, a real person will never be captured by words, and that in fact "how one talks about another person is really a question of degree, not kind . . . . The task of the writer is to choose his place along that scale with some real understanding of what the choice entails and an awareness of why he made that choice rather than another." (p. 154)

Underlying the exposition of how language controls the writer or speaker and how the user of language may manipulate it for his own purposes, is a personal concern, one that we may have shared in our law school days and which may be relevant to us today. In the introduction, the author asks "how an intelligent and educated person can possibly spend his life working with the law when life is short and there is so much else to do." (p. xxii) Specifically, "given the other alternatives, why would anyone want to spend his time reading and writing the language of law?" Happily for all of us, White concludes that there is good reason to be a lawyer. After all, "the lawyer is at heart a writer, one who lives by the power of his imagination." (p. 208) The lawyer's work involves imagining ahead of time how to deal with opponents, juries and judges. Lawyers must imaginatively organize facts and interpret them, express facts in an original way so that one's statement of one's own version of things can stand the test of comparison with another version, so that it will be taken as the right one. (p. 209) Although the legal language system is flawed,

[d]ispute is disorder, potentially chaos: the legal language system provides a way by which the disorder is confined, a language in which a conclusion can be stated and understood. We fight about one thing, but at the same time say we agree about thirty others, to keep disorder from spreading. (p. 229)

This book was originally used as a course book for law students (p. xi) and although it has been abridged to remove much of the technical legal material, the remaining writing and reading assignments, and numerous discussion questions call to mind law school lectures and assignments. In fact, the reader may wish, as this reviewer did, that a teacher's manual was available to explain the intended thrust of some of the discussion questions. The legal selections included in the book were chosen to demonstrate the inadequacies of the legal language system. Examples of outstanding legal writing in which some of the techniques advocated by the author are applied are, unfortunately, missing.

This is not to say that the book is without value. Certainly every research and writing instructor should at least scan it. The section on the insanity defense would be of interest to the criminal law professor. Anyone with a limited background in the humanities would receive an introduction to some of the major writers in various disciplines. For those interested in improving their legal writing, this book would be of great benefit. White has some excellent advice and ideas. One the high points of the book for me was the following

comments concerning judicial opinions.

[T]he whole point of the judicial process is to call a person or event a name, to affix a label . . . . [I]f it is to express the process by which the original intention is worked out, the judicial narrative must keep the reader in a sort of suspense or open-mindedness, during which he is exposed one by one to the facts and arguments that seem important to the judge, until the reader has them all, at which point he should find himself agreeing with the judgment . . . . [T]he movement of the opinion, like that of the poem, ought to be one of education; expressing a change from one attitude, one way of seeing things, to another, by an expansion of understanding . . . . What this sort of writing achieves, then, can be put in terms of honesty and ease: it opens up for the reader one's doubts, it points out the places of greatest weakness, of most likely difference; it facilitates his judgment and makes it more likely to be sound. (pp. 238-39)