

Teaching Like a Lawyer

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Lawyers do not just know rules. More broadly, lawyers typically approach problem solving from a perspective which is often called "thinking like a lawyer." Lawyers' problem-solving approaches undoubtedly have much in common with those of other professionals whose fields make claims to rationality. At the same time, some part of a lawyer's approach to problems is distinctly legal, a way of looking at the world that underlies legal analysis and is unique to lawyers.

This short essay suggests a process for Street Law students to "think like a lawyer" with respect to the "problem" of how to effectively teach law-related materials to high school age students. The process rests on the analysis of an appellate court opinion. While direct evidence of thinking like a lawyer may be unavailable, appellate court opinions are an important form of circumstantial evidence of what constitutes a legal approach to problem-solving. By parsing an opinion, in this instance a U.S. Supreme Court opinion, we can identify important aspects of thinking like a lawyer and try to apply them to classroom teaching. In other words, for the purposes of this essay an appellate court judge is a teacher whose teaching methods are reflected in the written opinion. If "thinking like a lawyer" is a broadly applicable approach to problem-solving, then many of those same "teaching methods" might be applicable to classroom teaching.

The case (which I selected at random) is Illinois v. Wardlow, 528 U.S. ____ (2000). Wardlow held that police officers patrolling a high crime area had the right to detain and pat down an individual who fled as the officers drove past. However, the rule set forth in Wardlow is irrelevant to the present discussion. The issue here is simply whether an opinion such as Wardlow can provide guidance for effective teaching of law-related material. If so, perhaps consulting additional opinions can yield other useful teaching insights.

Teaching Method # 1: Storytelling. The Wardlow opinion sets forth a concrete story. According to the story, the officers were part of a caravan of police cars entering a high crime area looking for narcotics activity. One of the officers saw Wardlow holding an opaque bag. Wardlow looked at the officers and then fled. They officers caught him. One of them conducted a pat-down search for weapons, felt a hard object shaped like a gun in Wardlow's pocket, pulled out a handgun and arrested Wardlow.

Stories are as important in the classroom as in appellate court opinions. Stories tend to peak student interest. Many students are primarily visual learners, and a concrete story allows students to develop in their minds a visual image of what took place. Moreover, abstract legal rules have meaning only insofar as they apply to concrete scenarios, so providing such scenarios is necessary for student understanding of

legal principles. (One tip: When creating scenarios, use the names of the high school students.)

Teaching Method # 2: Case History. The Wardlow opinion summarizes the path the case followed on its way to the Supreme Court. For example, the opinion tells us that Wardlow was convicted after the trial court denied his motion to suppress the gun. We also learn that the Illinois intermediate and supreme courts disagreed with the trial court judge and ruled that the police officer unlawfully seized the gun.

Since judges can rule only on questions that have been properly presented, the case history portion of an appellate court opinion can help explain the issue that a court decided. A bit of history can similarly help high school students understand how an issue may come to be decided by a judge. For example, assume that you presented the facts of Wardlow as a classroom hypothetical. How were these facts established? How do appellate court judges know what happened? When would a judge first rule on the legality of the police officer's conduct, and what would be the role of the attorneys in the process? Delving below the surface facts of a case can help students understand how and when legal issues get raised and decided.

Teaching Method # 3: Identify Underlying Values. Legal rulings are value-laden. That is, judges' rulings rest in part on moral or political values which they consider embedded in experience, legal rules and constitutional principles. For example, one value underlying the Wardlow opinion is that Fourth Amendment rules must be flexible enough to allow police officers to use common sense and experience when deciding whether conduct is suspicious. Another value is that an acceptable cost of flexibility is that police officers may sometimes detain and pat down innocent people.

You can help students understand and critique legal principles by identifying (or asking students to identify) the underlying values on which they are based. Why are some bad deeds punishable through criminal prosecutions, while others are civil in nature? Why might it be acceptable for protesters to burn the country's flag? Values underlie all of our legal principles, and students cannot understand or evaluate those principles unless they are familiar with those values.

Teaching Method # 4: Relate Facts to Principles. In Wardlow, many facts appear both in the overall story of what happened, and then again in the context of specific legal principles. For example, the initial story tells us that the events took place in a high crime area. Later, we're told that the fact that events took place in a high crime area is a factor that police officers can consider when determining whether a suspect's behavior is suspicious.

Abstract terms have legal meaning only insofar as courts apply them to concrete facts. Thus, merely telling students that suspects are entitled to "due process of law," or that police officers can detain a suspect only if they have a "particularized suspicion that person is committing a crime," is of little value. To understand abstract principles such as these, students need opportunities to relate the happenings in a story to abstract principles.

Teaching Method # 5: Logical Progression. The Wardlow opinion facilitates comprehension and resolution by organizing the "lesson" according to a series of sub-issues that are taken up in a sensible order. For example, case history precedes legal analysis because that history establishes the court's jurisdiction, and in the absence of jurisdiction the court would lack power to engage in the analysis. Similarly, like a prism that separates a beam of light into its constituent colors, the opinion breaks down the ultimate global issue ("did the police act lawfully?") into distinct sub-factors on which an answer rests (e.g., "was Wardlow behaving suspiciously?") Moreover, the opinion addresses the police officers' grounds for detaining Wardlow, and only after deciding that they had legitimate grounds to do so does it go on to address their right to pat him down.

As in an appellate court opinion, the effectiveness of classroom teaching can depend on the order in which you address issues. For example, if three of your lessons will concern the court system in general, the distinctions between civil and criminal case, and murder, you'll need to arrange the order of lessons according to a sensible plan. Moreover, the planning should extend to the order of topics within an individual lesson. For example, if you're teaching about murder, you may want to think about whether to lay out general principles and then ask students to apply those principles to particular scenarios (a "top down" form of teaching) or to ask students their opinions with respect to particular scenarios and derive the principles from those opinions (a "bottom up" form of teaching). Finally, another "ordering" issue involves whether you need to temporarily "suspend" a lesson to explain unfamiliar terminology.

Teaching Method # 6: The Importance of Precedent. The opinion discusses prior cases which set forth principles that are taken as having been established by prior decisions. For example, one such principle is that standing alone, a person's presence in a high crime area does not give rise to a particularized suspicion that the person is engaged in criminal activity.

Is your teaching based on principles that you regard as settled? Examples of such principles might include: (1) All students should participate in class discussions; (2) Active learning methods are more effective than lecturing; (3) Students need opportunities to write. Whatever they are, you may be able to improve your teaching by making them explicit at least to yourself, and perhaps to your students as well.

7. The opinion reaches a definite outcome. There's a happy winner and a disappointed loser. The result has important legal consequences, of course, but also gives meaning to and helps readers recall the other portions of the case.

To some extent, the same is true in school- the students who get high grades are "winners," those who don't may be "losers." A good goal is to give all students a chance to succeed in class discussions, perhaps through participation in group

activities and role play exercises. When you ask students to make arguments based on concrete scenarios, provide answers when you can reasonably do so.

8. Legal principles grow out of judges' everyday knowledge of how the world works and people behave. Nothing distinctly "legal" about this information. For example, here the judges' everyday experience allows them to understand that the reason that a person might run away after seeing a police officer is that the person is engaged in criminal activity, and that some neighborhoods have higher rates of crime than others.

Try to relate scenarios to experiences the students are likely to have had (either personally or vicariously through reading or hearing about them). If going beyond students' likely experience data base, have to provide the information.

Conclude with analogies to general teaching principles. E.g., just as decision is based on values, so might your teaching- e.g., participation by all students might be a value. As for "case history," might benefit by knowing the "case history" of students- are they taking class because it's required or is it an elective? How have they performed in the past as students?