Teaching the Academically Underprepared Law Student

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Critical Reading and Legal Writing

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CRITICAL READING TECHNIQUES
FOR LAW SCHOOL SUCCESS©

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BEFORE READING: PURPOSE, ROLE AS ADVOCATE OR JUDGE, AND FOCUS

I. CHECKLIST

WARNING: DO NOT JUST HIGHLIGHT & UNDERLINE. TAKE NOTES WITH YOUR THOUGHTS ABOUT THE CASE AND THEN BRIEF THE CASE DURING PHASE 3.

PHASE 1: BEFORE READING

1. Read for a purpose – assume the role of advocate or judge.
2. Think about the amount of time you have to read the case.
3. Read with energy and focus.

II. SESSION #1 SUMMARY

The first session will examine three important factors that good readers need to consider in the “before reading” phase – the purpose of reading cases, how to read as an advocate, and how to read with focus. This session will also discuss the “warning” in the Checklist – Do not just highlight and underline.

A. Read for a Purpose

The purpose for reading in law school is very different from the purpose for reading in most undergraduate courses. As an undergraduate, students often read to master specific content and then are required to demonstrate that they have learned the content in tests, papers, and exams. In law school, students read cases so that they can solve legal problems. When reading cases in law, it may not be important to be able to memorize the specific date of a decision or the specific location of a crime or the specific name of the person who entered into a contract. However, it is important to understand the key facts and the elements of a rule so that the rule can be applied to solve a new legal problem. In short, students need to read cases to understand key rules and to learn how to apply rules to new facts, not simply to acquire facts.

It is important to keep this distinction in mind as you read cases for class or writing assignments. Since the purpose of reading a case is to be able to solve a new legal problem, good legal readers will often think about alternative facts or the legal problem at hand as they read. It may help to remember that people come to lawyers to get assistance in solving a problem. They come to lawyers with facts – they have been
evicted, arrested, fired from a job. A lawyer's job is to figure out what legal principles can solve these problems. Lawyers must always read cases to understand legal principles and then apply these principles to the problem faced by their client.

The following chart summarizes the differences between reading judicial opinions and undergraduate text:

**COMPARISON OF READING PURPOSES**

<table>
<thead>
<tr>
<th>LAW SCHOOL Solve a legal problem on exam or writing assignment by:</th>
<th>UNDERGRADUATE Demonstrate knowledge of the following on test, paper, or exam:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Finding the rules in judicial opinions and statutes</td>
<td>• Dates</td>
</tr>
<tr>
<td>• Understanding the rules</td>
<td>• Places, names</td>
</tr>
<tr>
<td>• Synthesizing cases to formulate general rules</td>
<td>• Sequence of historical events</td>
</tr>
<tr>
<td>• Understanding policy considerations underlying the rule</td>
<td>• Vocabulary</td>
</tr>
<tr>
<td>• Applying rules and policy to new factual situations</td>
<td>• Scientific principles</td>
</tr>
</tbody>
</table>

**B. Read as an Advocate**

One of the most useful techniques employed by good readers is also the easiest to master. Research studies have all found that students perform better in law school when they take the role of an attorney or judge as they read judicial opinions. These studies compared the law school performance of students who read opinions for class (or to avoid embarrassment if they were called on) with students who pretended that they were one of the lawyers in the case or the judge as they read the opinion. Students who took on the role of an advocate or judge consistently outperformed the students who read to get through class.

The reasons for this result may be very simple.

- An advocate is responsible to a client and needs to do everything to represent that client to the fullest extent possible.
- An advocate must understand the client’s factual problem completely.
- An advocate must understand the rules that apply to the legal problem and be able to anticipate opposing arguments.

When students read as an advocate, they may have looked at the facts more carefully. They may have been more engaged in their reading because they cared about the result. For these reasons, the students may have tried to understand the underlying legal arguments, holdings, and policy considerations more carefully.
C. Read with Focus

Reading requires a great deal of focus and energy. It is important to try to focus your attention before you start reading. Techniques to improve your focus will be discussed in class such as mindfulness.

In addition, it is clear that no one can sit for long periods of time and remain focused. Our brains and bodies are simply not designed to do this. There are some simple exercises that can be done that will improve brain functioning and focus. Suggested exercises are in TAB 1.

D. Time

Law students and lawyers are busy people. Good critical reading techniques will save you time because you will start noticing key aspects of a case automatically. Once you learn good critical reading techniques, you will become a more efficient reader. Remember that your reading speed will increase as you accumulate a larger legal vocabulary, more familiarity with legal procedures, and a better understanding of legal principles. Be patient as you are acquiring all of this new information.

E. Warning

There is a very important WARNING at the beginning of the Checklist:

DO NOT JUST HIGHLIGHT & UNDERLINE. TAKE NOTES WITH YOUR THOUGHTS ABOUT THE CASE AND THEN BRIEF THE CASE DURING PHASE 3.

This warning is based upon the results of every research study that has been conducted on critical reading in law school. Every study has concluded that students who only highlight and underline cases consistently perform at a lower level than students who think about the cases, make predictions, and evaluate the cases. While it is certainly fine to do some highlighting and underlining, that strategy alone will not be successful.

III. THINK ALOUD EXAMPLES

Two Think Aloud examples demonstrate how high performing students read as advocates while lower performing students read to get by in class.

The first study found that students with good reading skills actually “Beat the Odds” regarding how they performed in law school. In this reading study, Laurel Currie Oates studied the reading strategies of a law school Professor and four law students. At the end of their first semester, the better readers, William and Maria, ended up the top

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1 Laurel Currie Oates, Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs, 83 IOWA L. REV. 139 (1997).
15% of their class while the readers using less effective strategies, Jackie and James, were in the bottom 10% of their class. All four students had undergraduate GPAs and LSAT scores that predicted they would end up in the bottom “10% of their entering class.”

Throughout these sessions, we will examine the strategies utilized by the Professor and these four law students to determine which strategies resulted in William and Maria ending up in the 15% of the class and the techniques that may have contributed to Jackie and James being less successful.

The following think aloud shows that the Professor and the higher performing students read a case for a specific purpose and took the role of an advocate or judge. The lower performing students read for information or out of fear of being called on.

<table>
<thead>
<tr>
<th>PROFESSOR-STUDENT</th>
<th>PURPOSE FOR READING</th>
</tr>
</thead>
</table>
| Professor         | *I just realized that I can’t begin reading until I know why I am reading. Since I got out of law school, I don’t just read cases. When I read, I am reading for a reason.*  

William (TOP 10%) | “William read with a strong sense of purpose. ... he read to see how he would have decided the case and, in his interview, he stated that when he reads cases, he puts himself in the role of the decision maker and evaluates what the outcome of the case should be.”  

Maria (TOP 15%) | “Although she sometimes thought about how she might use the case in practice, she never played the role of judge.”  

Jackie (BOTTOM 20%) | “did not question her purpose in reading the cases or assume a particular role.”  

Jackie did not understand the difference between law school and college. As a

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3 The case was a casebook version of *Whittaker v. Sanford*, 85 A. 399 (1912). The casebook version is in TAB 3 along with the actual case.

4 Oates, supra note 2, at 232-33.

5 *Id.* at 238-39.

6 Oates, supra note 1, at 155.

7 *Id.* at 153.
In the second study, Professor Leah M. Christensen also found that higher performing students read differently than lower performing students. Christensen studied the reading strategies of twenty four law students who had just completed their first semester of law school. Based upon their UGPA and LSAT scores, it would have been expected that all students would have performed about the same after the first semester. In fact, the twelve better readers ended up in the top 25% of the class (10) and top 50% (2). The weaker readers ended up in the bottom 25% (8) and bottom 50% (4). One difference related to the reader's focus on the purpose of reading the case.

<table>
<thead>
<tr>
<th>STUDENT</th>
<th>PURPOSE FOR READING</th>
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<tbody>
<tr>
<td>Student (TOP 5%)</td>
<td>Began reading by noting the purpose of reading: “All right. I am a practicing attorney, and I'm reading the opinion to prepare for a meeting with a client, and they have a case that is similar to the facts that I am reading,[connecting with purpose]. About mid-way through the facts of the opinion, she once again related her reading to her purpose by analyzing the case to counsel her ‘client’...This reader connected with purpose consistently throughout her reading, assuming the role of an attorney as she moved through the text.”</td>
</tr>
<tr>
<td>Student (BOTTOM 10%)</td>
<td>“failed to connect with the purpose during any part of his reading. As a result, he was easily distracted as he read and appeared to be overwhelmed by... details in the text.” “OK. Now I’m thinking what I’d like to purchase on Ebay.[reporting distraction]//I actually stopped drafting</td>
</tr>
</tbody>
</table>

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8 Oates, supra note 2, at 240-41.
9 Oates, supra note 1, at 156.
10 Leah M. Christensen, Legal Reading and Success in Law School: An Empirical Study, 30 Seattle Univ. L. Rev. 603 (2007). This study used the actual case In re Thonert, 733 N.E. 2d 932 (Ind. 2000) which is found in TAB 3.
11 Id. at 634-35.
IV. **FISHER v. CARROUSEL MOTOR HOTEL, INC.**

As we read the *Fisher* case (TAB 2), we will assume that we are representing Mr. Emmit Fisher and that Carrousel Motor Hotel, Inc. has gone back to the Texas Supreme Court seeking an En Banc Reconsideration of the decision pursuant to Rule 49.7 of the Texas Rules of Appellate Procedure.

V. **FEEDBACK**

1. As counsel for *Fisher*, we need to be prepared for arguments that Carrousel may make in the Texas Supreme Court when they seek En Banc Reconsideration of the decision. What is the key argument that Carrousel made in the lower courts?

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12 *Id.*
CASE READING CHECKLIST¹³

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PHASE 1: BEFORE READING
1. Read for a purpose - assume the role of advocate or judge.
2. Think about the amount of time you have to read the case.
3. Read with energy and focus.
4. Put the case in context:
   a. Look at the course syllabus, casebook table of contents, or research assignment.
   b. Look at the name of the case, citation, Judge’s name, court, and date.
   c. Use prior knowledge that would be useful.

PHASE 2: READ FOR OVERVIEW
1. Skim the entire case from beginning to end.
2. Remembering the structure of cases: look for previous legal proceedings, facts, issue, reasoning, holding, judgment, and look for headings that separate issues.
3. Focus on the parties, who won (disposition), and what is case generally about.

PHASE 3: READ MORE CAREFULLY
1. Understand the facts completely.
2. Look up unfamiliar words.
3. Read to understand the issue, holding, rationale/policy and dissenting opinions.
4. Reread and analyze confusing parts of the case.
5. Read each part of the case in the context of the entire decision to understand the main ideas.
6. Make margin notes with your reactions to the case, highlight, and NOW BRIEF CASE.
7. If the rule of law is not explicitly stated, make inferences to identify the rule.

PHASE 4: AFTER READING
1. Compile questions - talk with other students/Professors.
2. Evaluate the decision and the result.
3. Think about how the decision might be different if the facts were different or how the decision could be applied to facts in a research problem.
4. Synthesize cases to determine how cases fit with other cases in casebook or research.

¹³ This Checklist is based, in part, on the “Guidelines for Case Analysis” developed by Professor Mary A. Lundeberg. See Mary A. Lundeberg, Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis, 22 Reading Research Quarterly 407, 430-31 (1987).
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