



Summer 2014

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Teaching First-Year Law Students to Read So Carefully That They Discover a “Mistake” in a Judicial Opinion

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Critical reading skills are key to law school success. In fact, reading skills may be more determinative of law school success than LSAT scores. However, some students arrive at law school with deficient reading skills or with undergraduate skills that do not translate into good reading skills in law. Furthermore, after reading appellate decisions, students may read less carefully if they forget that cases involve real life problems that are very significant to the parties. This article

will examine empirical studies relating to critical reading in law school, summarize the practical suggestions that have been made to teach reading skills to law students, and propose that reading skills can be strengthened by teaching students how to read as they actually reenact trial and appellate court proceedings in class.



Critical reading skills are key to law school success. In fact, reading skills may be more determinative of law school success than LSAT scores.

Reading is a process of “building a mental representation of ideas.” Reading theory makes it clear that because human beings have a small amount of short term memory, readers must take steps to ensure that materials are processed so that they can be stored in long term memory. One of the early reading theorists proposed the SQ3R method – survey, ques-

tion, read, recall, and review. Empirical studies have found that law students who employ these types of principles are more successful. These studies are important to consider as they have identified specific teachable factors that contribute to reading success in law school.

Mary Lundeberg, who performed the first research on the characteristics of expert legal readers, found that experts (law professors and attorneys) read cases differently from novices (individuals with no legal training). The experts understood the context of cases by examining the heading, parties, court, date, and judge. Experts first read the case for an overview, flipped to the end of the decision to determine the result, and understood the structure of court decisions. In addition, they created a mental picture of the facts in the case. The experts

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read more slowly at the beginning of the case to completely understand the context and reread portions of the case that were unclear. They also evaluated the court decision and thought about hypothetical situations. In contrast, novices read at an even pace from beginning to end and focused on highlighting and paraphrasing the decision. They did not focus on the facts or reread difficult portions of the decision.

Other researchers have elaborated on these findings. Dorothy Deegan examined how law students read a law review article and observed that high performing students used less time paraphrasing and underlining text and more time “problematizing” or actively reacting to the text by making predictions and hypothesizing about the meaning of the article. Laurel Currie Oates found that students performed better when they “read for a purpose,” and understood the “importance of context.” James Stratsman noted that students who read a judicial opinion for an “advisory role, a policy role, or an advocacy role” performed better than those

who read “for class recitation.” Students seemed to comprehend more from their reading when “they read with a ‘real world’ purpose.” Leah Christensen also found that high performing students spent significantly less time utilizing default strategies (highlighting and paraphrasing), and more time using problematizing strategies (hypothesizing, predicting, synthesizing) than low performing students. Peter Dewitz noted that good readers “constantly monitor their reading, noting when comprehension is proceeding smoothly and when difficulties occur. When comprehension breaks down, readers attempt to repair their problems through rereading the text, summarizing, making inferences or consulting outside help.” It is significant to recognize that the ability to monitor comprehension is a crucial skill for reading as well as the practice of law. When surveyed, major law firms stated that an essential skill for new lawyers is to “know when they don’t know.”

Based upon these studies, how do students become good critical readers? Students need to understand why they are reading a case, i.e., the case context, as

well as the organizational structure of cases. Expert readers start by reading the case for an overview and often look at the end of the case to find the result. Experts become completely familiar with the facts and reread the case to understand and evaluate the court’s decision. In teaching critical reading skills, it is helpful to provide a preview of concepts with charts and graphs to place a case in context. It is also useful to model expert reading, use checklists and written exercises, and use small group “read alouds” to check comprehension. In addition to questioning students in class, students can be asked to prepare questions to lead discussions.” Finally, students need to be given “a real-world purpose for which to read.”

This paper proposes that critical reading skills can be enhanced by having law students reenact trial and appellate court proceedings in class. This method incorporates all of the skills found in high performing readers. First, students must read for a specific purpose when they take the role of either the attorney or judge. Second, students must understand the context of

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the decision – the court, subject matter, date of decision – to properly “represent” the client or decide the case. Third, they must reread passages from the opinion that are unclear in order to make the arguments that were presented in the trial or appellate court. Students must completely understand the facts to effectively function as a witness or attorney questioning the witness. Furthermore, students must evaluate and question the trial court decision as they make arguments to the appellate court. Finally, this technique can serve to remind students that cases are brought by real people who have used the legal system to solve important problems.

This reenactment approach was utilized in an Academic Success class on critical reading that focused on a case students had to master for their Legal Writing “closed memorandum” problem. As discussed below, the opinion actually had a typographical error related to a key issue in the case and through careful reading and analysis, the students found the error by the end of the session.

The closed memorandum problem dealt with whether a crime constituted second or fourth de-

gree assault. In Kentucky second degree assault requires a finding of “serious physical injury” while fourth degree assault only requires a finding of “physical injury.” “Serious physical injury” is defined as “prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.” Students read three cases on the subject as well as the relevant statutes. *Parson v. Commonwealth*, 144 S.W.3d 775 (Ky. 2004) was the most complicated case and was therefore used in the Academic Success session on critical reading.

At the beginning of the Academic Success session, there was a brief discussion relating to the importance of active reading, i.e., becoming engaged with the materials, understanding the facts, holding, and reasoning, and questioning the court’s decision. Since the students were familiar with the subject matter, having read the statutes and three assigned cases, there was only a brief discussion of the law relating to assault. Next, students were assigned roles in the trial court. There were six witnesses: four doctors, a physical therapist, and the victim. Students were assigned as prosecutors, defense

counsel, trial judge, appellate judges, and appellate advocates in the Kentucky Supreme Court.

The reenactment started with the “prosecutors” and “defense attorneys” questioning the student witnesses at the trial level. The student assigned the role of the trial judge explained his decision. The reenactment then shifted to the Kentucky Supreme Court where the “appellate attorneys” set forth their arguments. The “Supreme Court Judges” explained how courts had ruled in prior decisions and set forth the decision of the court. After carefully analyzing the court decision from a variety of perspectives, the students became completely knowledgeable about the facts in the case as well as the legal arguments.

Because the Supreme Court opinion focused on the meaning of “serious physical injury” and “prolonged impairment of health,” dates were critical to the court’s decision. The decision stated that the vehicular accident (assault) occurred on May 30, 2000. Dr. Zhou first saw the victim on October 30, 2000. The opinion indicated that the victim’s last visit to doctors was on December 28, 2000, five days before trial. This would seem to

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indicate that the victim was treated for 7 months. Later in the opinion, however, the court found that a “jury could also believe that Eberle was still suffering from the effects of her injuries on the day of trial, **nineteen months after the assault**, and that the duration of those effects constituted a “prolonged impairment of health.” *Id.* at 787 (emphasis added). Based upon an analysis of the briefs in the lower court, it became clear that the Supreme Court had made a mistake in the opinion and that the December 28, 2000 date was really December 28, 2001.

After reenacting the trial and appellate proceedings, some students realized that there was a problem with these dates. After discussion, it was agreed that there was indeed a typographical error in the opinion. Needless to say, the students were engaged throughout the class and were delighted to find that they had read so carefully that they had actually found an error in the opinion.

Critical reading skills need to be taught in a variety of ways. In offering

advice to law students, Professor White recommended that students read by “trying to reconstruct from the opinion...the facts that occurred in the real world before any lawyer was brought into play....You should try to create a movie of life....This is the experience upon which the law will be asked to act in its peculiar and powerful ways....” The reenactment method is one way to make cases come alive and demonstrate that cases involve important issues faced by real people. Once students become actively engaged, their critical reading skills should improve.

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