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Good Critical Reading Strategies Can Improve Legal Writing

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Good Critical Reading Strategies Can Improve Legal Writing

BY: JANE B. GRISÉ



We know from previous articles in this column that good writing involves attention to organization, grammar, clarity, and word choice. Studies have shown that good writing also requires good critical reading.

Over the past thirty years, researchers have learned that lawyers and high performing law students read differently than nonlawyers and lower performing law students. In 1987, the first study was conducted to compare the critical reading techniques of lawyers and nonlawyers and there were several interesting discoveries.¹ While novice legal readers highlight as they read a case from beginning to end, expert legal readers utilize many critical reading strategies before they start reading cases and during the reading process. Before beginning to read, experts understand the context or subject matter of a case by looking at headnotes or the case summary. They look at headings and skim the decision and then read the entire decision more carefully. Once they start reading, they look up unfamiliar words. Rather than trying to find great quotations, they look for the main ideas in the case. Experts often read the facts more slowly while novices read all sections of a case at the same rate. Experts reread sections of an opinion and evaluate the case as they read. Novices often look for the “correct” interpretation of a case and do not reread confusing sections.

Critical reading techniques can have an impact on good writing. In a study at the University of Kentucky College of Law, the writing of two groups of law students was compared. One group received critical reading instruction and one group did not. In the critical reading classes, students were taught the critical reading techniques used by expert legal readers. When the writing of the two groups was compared, the study found that the students who received the critical reading instruction were better writers.² The instruction improved their ability to explain cases in their memos. This makes perfect sense. If a writer does not understand a case, it is difficult to explain the case in a legal document or use the case to make a persuasive argument.

What critical reading techniques will improve everyone’s ability to write well?

BEFORE READING

1. Think about the Reading Goal

Before reading a case, think about the purpose for reading. Are you reading to explain the case to a client or the court? Do you need to read the case for background information about a general topic of law? Are you only interested in one particular aspect of the case? Your reading purpose has an impact on how you read different sections of the opinion.³

2. Understand Context and Do an Overview

Do not read a case blind without understanding the general subject of the case or its context.⁴ Studies have shown that if you read a title or heading, it is much easier to understand the entire book or paragraph. Likewise, if you understand the general topic of a case, it is much easier to understand the entire case. Furthermore, rather than reading from beginning to end, do an overview of a case.⁵ Look for headings, see how the case is organized, and flip to the end of the decision to see how it was resolved.

DURING READING

1. Read Facts Slowly, Look up Unfamiliar Words, and Reread

While novices read all sections of an opinion at the same pace, experts usually read the facts more slowly.⁶ Experts also look up unfamiliar words and reread sections of opinions that are confusing.⁷ They pay particular attention to conjunctions such as “and” and “or.”⁸ They notice repeated words in a decision and may break complex sentences into shorter segments to better understand the meaning of the case. They may even read portions of a case aloud to help elucidate confusing sections of the opinion.

2. Look for Main Ideas

Expert readers look for the main idea of a case rather than a great line to quote. The main idea is usually found in the court’s holding and reasoning. However, it is important to understand the entire opinion and not just rely on a single line in isolation.⁹

3. Evaluate Cases

Expert legal readers evaluate cases as they read. They recognize that opinions do not have a fixed meaning. As one reading expert has stated, it is “never simply enough to know what a case ‘says.’ One must know what plausible interpretations and applications of law could be made from it.”¹⁰

It is easy to incorporate critical reading strategies into our daily practice. These techniques can make us better writers and advocates for our clients.

ENDNOTES

1. Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 Reading Res. Q. 407 (1987).
2. Jane Bloom Grise, *Critical Reading Instruction: The Road to Successful Legal Writing Skills*, 18 Western Mich. U. Cooley J. of Practical & Clinical L. (2017).
3. Jane Bloom Grise, *Critical Reading for Success in Law School and Beyond 7* (West Academic 2017).
4. *Id.* at 75.
5. *Id.* at 83.
6. *Id.* at 93.
7. *Id.* at 115.
8. *Id.* at 130.
9. *Id.* at 139.
10. James F. Stratman, *When Law Students Read Cases: Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 Discourse Processes 57, 88 (2002).

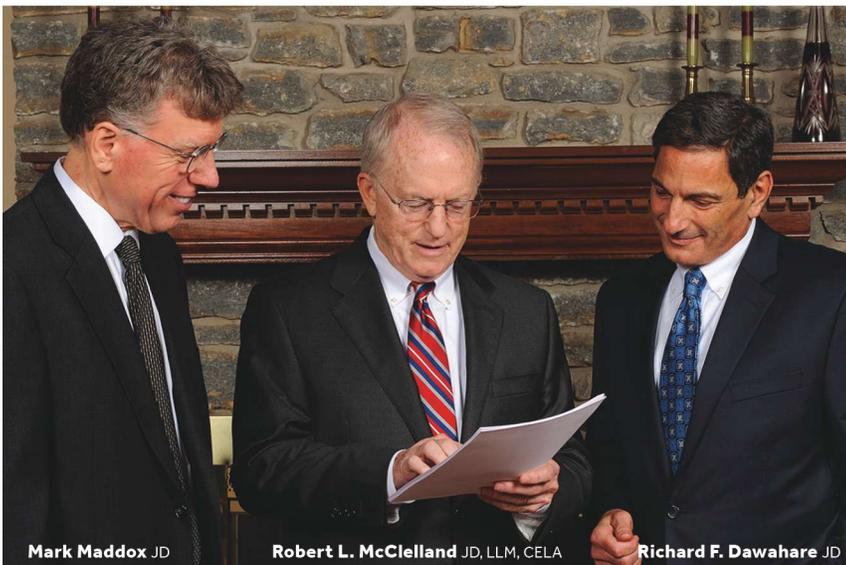
ABOUT THE AUTHOR

JANE BLOOM GRISÉ is the Director of Academic Enhancement and an Assistant Professor of Legal Research and Writing at the University of Kentucky College of Law. Prior to joining UK Law she was in private practice specializing in international adoption law. Before moving to Lexington, she was an Assistant United States Attorney in the Southern District of New York where she was Deputy Chief of the Civil Division as well as Chief of the Civil Rights Unit. Before joining the US Attorney's Office, she served as Managing Attorney of Mid-Hudson Legal Services in Poughkeepsie, New York. She received her law degree from the University of Wisconsin.



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Attorneys Mark Maddox and Richard Dawahare are experienced members of the National Academy of Elder Law Attorneys who assist clients with medicaid planning, probate, guardianship and veterans benefits issues.

ElderLawLexington, the office of McClelland & Associates, PLLC, has assisted hundreds of families in preserving their resources and serves as Trustee for the Kentucky Guardianship Association, Inc. Pooled Special Needs Trusts.



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