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# "In a Case, In a Book, They Will Not Take a Second Look!" Critical Reading in the Legal Writing Classroom

Debra Moss Curtis  
Judith R. Karp



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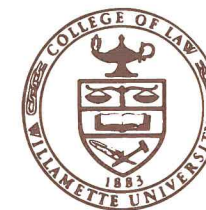
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**"IN A CASE, IN A BOOK, THEY WILL NOT TAKE A  
SECOND LOOK!" CRITICAL READING IN THE  
LEGAL WRITING CLASSROOM**

*Debra Moss Curtis  
Judith R. Karp*

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**“IN A CASE, IN A BOOK, THEY WILL NOT TAKE A  
SECOND LOOK!”  
CRITICAL READING IN THE LEGAL WRITING  
CLASSROOM**

DEBRA MOSS CURTIS\*  
JUDITH R. KARP\*\*

“STUDENT I AM”

Students need to learn to read  
But students want to read with speed  
Every week from fall to May  
This is what you hear them say:  
“I do not like to read things twice.  
I just want *you* to give advice.  
I will not read another book.  
I will *not* take a second look.  
How courts reason is so dense.  
Cases, statutes, make no sense.  
In a contract or in a tort,  
In a state or federal court  
I will not read another line,  
Reading is a waste of time.”<sup>1</sup>

I. INTRODUCTION

This Article is based on a presentation that was first assembled for the Southeastern Regional Legal Writing Conference in Septem-

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1. Created by Debra Moss Curtis and Judith R. Karp, September 2003. Our gratitude is extended to Abigail Mario, William Lazarchick, and Jennifer Tuby for their research assistance.

ber 2003.<sup>2</sup> The theme of that conference was “The Basics and Beyond: Building Solid Skills on Flawed Foundations.” As legal writing professors with nine years of teaching experience between us, we immediately honed in on “reading” as a core lawyering skill—though it is the one that seemed most flawed in the first-year legal writing class.<sup>3</sup> We determined that case analysis, statute analysis, synthesis, and application were not possible unless students *critically* read the material with which they were working. Many students in our classes were not actively engaging in the material that they were reading.<sup>4</sup> As we spoke with colleagues nationwide, we found this to be the case elsewhere as well. These anecdotal experiences reflect a nationwide trend in the decline in the number of adult literary readers in the United States.<sup>5</sup> Over the past twenty years, literary reading has declined among all education levels and age groups, with the steepest decline among readers within the age group of 18- to 24-year-olds.<sup>6</sup> The rate of decline for these young adult readers is 55% greater than those of the total adult population.<sup>7</sup> Furthermore, the decline in reading correlates to an increase in the use of electronic media devices, including the Internet, video games, and other digital devices.<sup>8</sup> This decline in interest in literary reading is consistent with the lack of critical active reading that we observed within our classes. Given the intended use of legal materials—for them to be understood, synthesized, and applied in legal memo format—a lack of cognitive process in reading has great implications. We decided to address them.

2. The Southeastern Regional Legal Writing Conference was hosted by Stetson University School of Law on September 20, 2003.

3. At Nova Southeastern University Shepard Broad Law Center, the first-year legal writing program is a “Lawyering Skills and Values” (LSV) program. The program consists of a full year of study divided into two three-credit courses and encompasses drafting, negotiation and mediation skills, research, and writing.

4. It is acknowledged that while a reader’s purpose may influence the depth and level of engagement in the reading, there is no question that academic material should be read critically. See *Writing About Literature*, Saskatchewan Indian Federated College, First Nation’s University of Canada, at [http://www.sifc.edu/english/writersguide/76TRRdCrit\\_1Strategies.htm](http://www.sifc.edu/english/writersguide/76TRRdCrit_1Strategies.htm) (last visited Nov. 9, 2004).

5. NATIONAL ENDOWMENT FOR THE ARTS, *READING AT RISK: A SURVEY OF LITERARY READING IN AMERICA* 21 (June 2004), available at [www.nea.gov/pub/ReadingatRisk.pdf](http://www.nea.gov/pub/ReadingatRisk.pdf) (last visited Nov. 9, 2004).

6. *Id.* at xi.

7. *Id.*

8. *Id.* at xii.

The use of the word “critical” can be misunderstood.<sup>9</sup> In the context of analysis and learning, “being critical” involves “probing and questioning,” which is not always a negative approach to material.<sup>10</sup> Critical reading has transformed from being considered an “enrichment” skill to a core skill.<sup>11</sup> Experts have noted that our learning process changes as we grow older—from seeing “what” is said, to understanding the “bias, assumptions, and perspectives” that are incorporated into a writing.<sup>12</sup> In addition, the concept of teaching critical reading is central to the concept of teaching *thinking* skills, which is a fundamental part of education.<sup>13</sup>

Critical reading absolutely encompasses the concept of “critical thinking.”<sup>14</sup> These two skills marry the finding of meaning with the evaluating of meaning, and indivisibly work together.<sup>15</sup> Overall, critical skills should not be treated as something to be isolated—such as with specific courses or texts—but rather should be treated as a part of the atmosphere of every classroom by every teacher.<sup>16</sup>

To meet our goals of preparing for the Southeastern Regional Legal Writing Conference in 2003, and later both for our updated and expanded presentation at the national Legal Writing Institute conference<sup>17</sup> and for the ultimate goal of teaching our students to read criti-

9. See Camille Wells, *Reading Critically* (Sept. 1, 1989), at <http://departments.mwc.edu/hipr/www/101-01/critread.htm> (last visited Nov. 9, 2004).

10. See *id.* However, Wells notes that this process often may allow the reader to see the flaws in an argument, which the authors would propose is a necessary step in legal analysis. In addition, some authors have described the critical perspective as reading with the assumption that a wrong has occurred, and that the writer is attempting to address that wrong. James R. Elkins, *Lawyers and Literature: Strategies for Reading*, at [www.wvu.edu/~lawfac/jelkins/lawyerslit/readstrategies.htm](http://www.wvu.edu/~lawfac/jelkins/lawyerslit/readstrategies.htm) (last visited Nov. 9, 2004).

11. Norma Decker Collins, *Teaching Critical Reading Through Literature*, *World of Education* (Aug. 1993), at <http://library.educationworld.net/a7/a7-100.html> (last visited Nov. 9, 2004).

12. *The Need to Improve Your Reading*, at [www.critical-reading.com/improve\\_reading.htm](http://www.critical-reading.com/improve_reading.htm) (last visited Nov. 9, 2004).

13. Kathryn S. Carr, *How Can we Teach Critical Thinking?*, at [www.risd.k12.nm.us/instruction/criticalthinking.htm](http://www.risd.k12.nm.us/instruction/criticalthinking.htm) (last visited Nov. 9, 2004).

14. See *id.*

15. *Critical Reading v. Critical Thinking*, at [www.criticalreading.com/critical\\_reading\\_thinking.htm](http://www.criticalreading.com/critical_reading_thinking.htm) (last visited Nov. 9, 2004) (acknowledging that, while critical reading and thinking operate together, discussing the two separately can remind the reader to evaluate a piece of writing on its own merit without allowing personal viewpoint to overrun critical reading).

16. See Kathryn S. Carr, *How Can we Teach Critical Thinking?*, at [www.risd.k12.nm.us/instruction/criticalthinking.htm](http://www.risd.k12.nm.us/instruction/criticalthinking.htm) (last visited Nov. 9, 2004).

17. The Legal Writing Institute Conference “Horizons: Marking the Twentieth Anniversary of the Founding of The Legal Writing Institute, 1984-2004” was hosted by Seattle University School of Law in July 2004.

cally, we began a year-long examination of critical reading. We specifically analyzed what "critical reading" is, why it is necessary to teach and use it in the legal writing classroom, and what sorts of exercises could be used to incorporate this important skill in the first-year writing curriculum. This Article explains the concept of critical reading, how it may be taught in the legal writing classroom, and guides the reader through exercises developed to teach these skills.

## II. CRITICAL READING: A PRIMER

The State of Hawaii Performance Standards for Language Arts defines the function of reading as "creating meaning with text."<sup>18</sup> It is from this broad and simple definition that we explore the stages and parts of critical reading. However, a federal court has noted testimony stating that critical reading is difficult "to measure."<sup>19</sup> Chitra Varaprasad, in an article posted on an Online Forum for English Teaching, considers the development of critical reading skills as part of the basic definition of literacy.<sup>20</sup> In 1981, the National Assessment of Education Progress Report noted that while 85% of 13-year-olds could successfully complete a multiple choice activity on a piece that they read, only 15% could "write an acceptable sentence" that summarized what they read.<sup>21</sup>

Critical reading also has been defined as "teaching students to think while reading."<sup>22</sup> It has been defined as "learning to evaluate, draw inferences, and arrive at conclusions based on evidence."<sup>23</sup> Readers must learn both "what to look for" when reading, and "how to think about what [they] find."<sup>24</sup> To do so, readers must prepare to

18. HAWAII STATE DEPARTMENT OF EDUCATION, HAWAII PERFORMANCE STANDARDS, LANGUAGE ARTS: GRADE 6-8 READING, at [http://www.k12.hi.us/~lyfujii/te3hm/hps\\_reading.html](http://www.k12.hi.us/~lyfujii/te3hm/hps_reading.html) (last visited Nov. 9, 2004).

19. *Mozert v. Hawkins County Pub. Schs.*, 827 F.2d 1058, 1077 (6th Cir. 1987) (Kennedy, J., concurring). The majority stated that critical reading includes development of "higher order cognitive skills that enable students to evaluate the material they read, to contrast the ideas presented, and to understand complex characters that appear in reading material." *Id.* at 1060.

20. Chitra Varaprasad, *Some Classroom Strategies Developing Critical Literacy Awareness*, 35 FORUM ENGLISH TEACHING ONLINE 3, 24 (July-Sept. 1997) at <http://exchanges.state.gov/forum/vols/vol35/no3/p24.htm> (last visited Nov. 9, 2004).

21. Norma Decker Collins, *Teaching Critical Reading through Literature*, World of Education, at <http://library.educationworld.net/a7/a7-100.html> (last visited Nov. 9, 2004).

22. *Id.*

23. *Id.*

24. *What is Critical Reading?*, at [www.criticalreading.com/critical\\_reading.htm](http://www.criticalreading.com/critical_reading.htm) (last visited Nov. 9, 2004).

read, actively read, and then complete post-reading activities in order to apply what they have learned.<sup>25</sup> One author has noted that if a reader "care[s] to get the most out of the materials," then reading critically (analytically) includes breaking down an argument into all parts, retracing all stages of the piece, and then evaluating the strengths, weaknesses, validity, and implications.<sup>26</sup> Only through the completion of all of these steps may a person truly engage the material and actively work with it.

### A. Pre-Reading Techniques

Critical reading actually begins before reading a work for the first time.<sup>27</sup> It is first important to put the material that is about to be read into context.<sup>28</sup> Readers should ask questions such as "Why I am reading this?" rather than just "diving into" the material. Doing so allows a reader to examine the material for structure and purpose.<sup>29</sup> If the material is for class, this may mean reviewing the syllabus and course description, and determining whether the material is connected to a specific assignment and just what that assignment is.<sup>30</sup> Even examining a title itself may prove useful.<sup>31</sup> But the general purpose is broader—students ought to identify the issue in a work, and consider who may have a stake in that issue, who controls it, or who may be affected by it.<sup>32</sup>

However, determining the context of a reading is important for any kind of material that is being read, and is something readers do in daily life. For example, most people determine which section of the newspaper to read before reading any one particular article—that simple act of knowing that they are about to encounter national news,

25. See Varaprasad, *supra* note 20.

26. *Practical Tips for Reading Critically-Academic Prose*, Adapted from Joshua Page, "Practical Tips for Reading Sociology", at [http://gsi.berkeley.edu/resources/discussion/read\\_crti.html](http://gsi.berkeley.edu/resources/discussion/read_crti.html) (last visited Nov. 9, 2004).

27. See Varaprasad, *supra* note 20.

28. See Camille Wells, *Reading Critically* (Sept. 1, 1989), at <http://departments.mwc.edu/hipr/www/101-01/critread.htm> (last visited Nov. 9, 2004).

29. See *The Goal or Assignment: How Will You Read?*, at [www.criticalreading.com/step3.htm](http://www.criticalreading.com/step3.htm) (last visited Nov. 9, 2004).

30. See *id.*

31. Esther Lombardi, *How to Become a Critical Reader*, About.com, at [http://classiclitt.about.com/od/forstudents/ht/aa\\_criticalread.htm](http://classiclitt.about.com/od/forstudents/ht/aa_criticalread.htm) (last visited Nov. 9, 2004).

32. *The Nature of the Text: What Are You Reading?*, at [www.criticalreading.com/step1.htm](http://www.criticalreading.com/step1.htm) (last visited Nov. 9, 2004).

local news, arts, or sports can help prepare their brain for the active steps of reading.

This technique has been applied to the critical reading of poetry.<sup>33</sup> In his guide designed for his first-year students, Professor of English John Lye suggests that, in the process of analyzing a poem, students should first look at the title, and then read the poem for “major indicators of its meaning,” such as setting and voice.<sup>34</sup>

Teachers also emphasize “being part of the writer’s audience” as another step in critical reading.<sup>35</sup> This may include learning more about the author, the author’s history, the author’s purpose, or the author’s expected audience.<sup>36</sup> A mistake that readers often make is to skip sections of the reading that are paginated with “lower-case Roman numerals.”<sup>37</sup> These prefaces or introductions can help readers accomplish this “orientation” goal.

Another pre-reading activity is examining the reading for length and structure.<sup>38</sup> Knowing the length of material to be read will enable the reader to correctly budget the proper amount of time for the material, ensuring that it is truly engaged and not rushed through.<sup>39</sup> Examining other features—such as tables of contents, chapter headings, or cross-references—can ensure that the material is followed in the correct order, and that the reader adjusts focus with each change in the material.<sup>40</sup> A brief glance into any illustrative materials, such as pictures, charts, or graphs, can do the same.<sup>41</sup>

33. John Lye, *Critical Reading: A Guide*, Brock University Department of English, at [www.brocku.ca/english/jlye/criticalreading.html](http://www.brocku.ca/english/jlye/criticalreading.html) (last visited Nov. 9, 2004).

34. *Id.*

35. *Critical Reading: What is Critical Reading, and Why Do I Need to Do It?*, Cleveland State Univ., The Writing Center, at [www.csuohio.edu/writingcenter/critread.html](http://www.csuohio.edu/writingcenter/critread.html) (last visited Nov. 9, 2004).

36. *Id.*

37. Camilla Wells, *Reading Critically* (Sept. 1, 1989), at <http://departments.mwc.edu/hipr/www/101-01/critread.htm> (last visited Nov. 9, 2004).

38. See *Critical Reading Techniques*, at [http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner\\_awl/chapter1/custom5/deluxe-content.html](http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner_awl/chapter1/custom5/deluxe-content.html) (last visited Nov. 9, 2004). See also *The Goal or Assignment: How Will You Read?*, at [www.criticalreading.com/step3.htm](http://www.criticalreading.com/step3.htm) (last visited Nov. 9, 2004) (discussing the importance of looking at the length of the article when planning the critical reading process).

39. *The Goal or Assignment: How Will You Read?*, at [www.criticalreading.com/step3.htm](http://www.criticalreading.com/step3.htm) (last visited Nov. 9, 2004).

40. *Id.*

41. Dr. Carolyn Haynes, *Reading Closely and Critically*, at [www.users.muohio.edu/neacklj/CriticalReading.html](http://www.users.muohio.edu/neacklj/CriticalReading.html) (last visited Nov. 9, 2004).

Oftentimes, generating questions about a reading before actually reading it can help a reader plan to be alert. Thinking about what the reader believes the material will be about and making a list of questions one hopes the material will answer can prepare the reader to engage actively in the material in the search for those answers or the discovery that those questions are not addressed.<sup>42</sup> The reader also may consider alternative ways that the information could have been presented, such as narrative or even layout.<sup>43</sup>

The last pre-reading step is physically skimming the material.<sup>44</sup> Unfortunately, many casual readers may consider skimming to be the actual process of reading the material. But skimming the work—going all the way through it without focusing on the active meaning of the words—is not really reading. It is a step to prepare the reader to next read and absorb the material. By implanting a vague notion of how the material begins, where it ends, and what its “claims” are, the reader eliminates the “unknown” factor from the reading.<sup>45</sup> Any suspense or wonder is gone, leaving the reader free to truly focus on *how* the writer went from point A to point Z, rather than *whether* the writer would get there.<sup>46</sup>

### B. Reading

One definition of critical reading is “evaluating relevancy and adequacy of what is read.”<sup>47</sup> Thus, the key difference between “critically” reading material and simply “reading” it is as noted: the act of actively engaging material while it is being read, rather than passively absorbing it.<sup>48</sup> Reading has three goals: to identify the most important points by the author, to see how these points fit together, and to understand and document a response, as the reader, to them.<sup>49</sup> Thus, to actively engage material, the reader must be completing an actual ac-

42. See Varaprasad, *supra* note 20.

43. *Id.*

44. See *Critical Reading Techniques*, at [http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner\\_awl/chapter1/custom5/deluxe-content.html](http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner_awl/chapter1/custom5/deluxe-content.html) (last visited Nov. 9, 2004).

45. See generally Camilla Wells, *Reading Critically* (Sept. 1, 1989), at <http://departments.mwc.edu/hipr/www/101-01/critread.htm> (last visited Nov. 9, 2004).

46. See *Critical Reading Techniques*, at [http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner\\_awl/chapter1/custom5/deluxe-content.html](http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner_awl/chapter1/custom5/deluxe-content.html) (last visited Nov. 9, 2004).

47. Varaprasad, *supra* note 20.

48. See *id.*

49. *Critical Reading Techniques*, at [http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner\\_awl/chapter1/custom5/deluxe-content.html](http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner_awl/chapter1/custom5/deluxe-content.html) (last visited Nov. 9, 2004).

tivity while reading.<sup>50</sup> Many students have grasped this task. They attack a textbook, highlighting marker in hand. Thus, by physically marking the book, these students believe that they are actively engaged in it. But what are they actually highlighting? An examination of the text probably reveals that virtually *all* of the printed text in the book is highlighted—clearly not helpful—or that the highlighted portions are irrelevant to the actual intended meaning.<sup>51</sup>

Nonetheless, annotating a reading, in some form, *is* an essential critical reading strategy.<sup>52</sup> Annotating focuses the reader's attention on the content and language of the text.<sup>53</sup> However, highlighting is only one annotation tool, and it is a passive one at that. Other useful annotating tools include outlining and creating questions within the text.<sup>54</sup> This may include taking margin notes, writing down ideas in a notebook, or keeping a "reading journal" in which readers regularly record personal responses to material they read.<sup>55</sup> Readers may want to develop their own symbols for annotating to denote certain kinds of content, which will encourage them to carefully consider that content as they read.<sup>56</sup> Rewriting the material in the reader's own words, applying the material to outside applications, or other engaging activities also clearly create meaning within the text.

Reading with knowledge and an eye for writing techniques also can help a reader find the active meaning. For example, writers generally place the main thrust of the arguments either at the very beginning or the very end of their paragraphs.<sup>57</sup> Connectors such as "as a result of" or "consequently" play a key role in furthering lines of reasoning already advanced.<sup>58</sup> In contrast, words such as "for example" generally signal supporting arguments.<sup>59</sup> In addition, the format of

50. See generally *id.*

51. See Practical Tips for Reading Critically-Academic Prose, Adapted from Joshua Page, Practical Tips for Reading Sociology, at [http://gsi.berkeley.edu/resources/discussion/read\\_crti.html](http://gsi.berkeley.edu/resources/discussion/read_crti.html) (last visited Nov. 9, 2004).

52. *Critical Reading Techniques*, at [http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner\\_awl/chapter1/custom5/deluxe-content.html](http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner_awl/chapter1/custom5/deluxe-content.html) (last visited Nov. 9, 2004).

53. See *id.*

54. Varaprasad, *supra* note 20.

55. *Critical Reading: What is Critical Reading, and Why Do I Need to Do It?*, Cleveland State Univ., The Writing Center, at [www.csuohio.edu/writingcenter/critread.html](http://www.csuohio.edu/writingcenter/critread.html) (last visited Nov. 9, 2004).

56. Laura L. Sullivan, *Critical Reading Strategies*, University of Florida, at <http://www.nwe.ufl.edu/~sullivan/4456.crit.read.html> (last visited November 29, 2004).

57. See Varaprasad, *supra* note 20.

58. See *id.*

59. See *id.*

academic writings generally incorporate an outline, including units with topic sentences that are developed through argument, and followed by logical arguments that progress one proposition at a time until the goal of the topic sentence is met.<sup>60</sup> Readers need also be aware of tone and level of vocabulary.<sup>61</sup>

Research is the most active reading technique. Rather than "glossing over" terms that the reader does not understand (or employing the often-taught technique of gleaning meaning from context),<sup>62</sup> a truly active and engaged reader physically interrupts the reading of material to discover further meaning of unknown terms. Guides on critical reading emphasize that every word is important, even more so when the reader does not understand some of them.<sup>63</sup> Readers also must be aware of imposing personal inferences on the definition of words rather than gleaning the appropriate ones.<sup>64</sup> Some readers fail to grasp key points because they improperly define relevant terms, thus, the act of animating portions of the material and discovering the full potential of it ensures understanding.

Readers should question the material as they read. During the active stage of critical reading, readers should ask the following questions: (1) What is the issue framed? (2) What is the source of the material? (3) Where is the definition of the terms within (from the

60. See Charles T. Davis, *How To Read the Text for the Argument Presented*, Appalachian State University, at <http://www1.appstate.edu/~davisct/common/howto.htm> (last visited Nov. 1, 2004).

61. See Donna LeCourt, *Reading for Meaning*, Colorado State University Department of English, at <http://writing.colostate.edu/references/teaching/co300man/pop7b.cfm> (last visited Nov. 1, 2004).

62. See Daniel J. Kurland, *Inference: Denotation*, at [www.criticalreading.com/inference\\_denotation.htm](http://www.criticalreading.com/inference_denotation.htm) (last visited Nov. 1, 2004). Students have different cultural and geographic backgrounds and thus will respond differently to substance, vocabulary, and slang because of their prior knowledge and experiences. *Id.*

63. See *Critical Reading: What is Critical Reading, and Why Do I Need to Do It?*, Cleveland State Univ., The Writing Center, at [www.csuohio.edu/writingcenter/critread.html](http://www.csuohio.edu/writingcenter/critread.html) (last visited Nov. 1, 2004).

64. See Daniel J. Kurland, *Inference: Reading Ideas as Well as Words*, at [http://www.criticalreading.com/inference\\_reading.htm](http://www.criticalreading.com/inference_reading.htm) (last visited Dec. 23, 2004). Kurland presents an often-used "brain twister" where the reader is presented with a scenario of a father and son who are involved in a terrible car accident. The reader is informed that the father dies, but when the son arrives at the emergency room of the hospital, the doctor looks at the patient and says, "I can't operate on him, he's my son." The reader is asked how this can be so. While some view this as a "puzzle" which tests reasoning, the scenario is a truly an exercise in reading. *Id.* Some social bias may have lead the reader to assume that the doctor was male, (the correct answer is that the doctor is the boy's mother) and thus mentally understood the word "doctor" incorrectly based on inferences, rather than critically reading with an open mind. *Id.*

author or outside)? (4) What facts or evidence are presented? (5) Are the arguments supported by the facts or evidence? (6) Does the material follow a logical structure? (7) Are there hidden assumptions in the arguments? (8) Are there logical flaws in the arguments, such as contradictory points, appeals to ignorance, bandwagon arguments, or circular reasoning? Finally, (9) are counter-arguments presented?<sup>65</sup> These questions assist the reader in achieving active-reading goals.

Readers also should evaluate any "evidence" the author presents to make a point.<sup>66</sup> This may involve discovering whether an article presents facts or only opinion and, if there are opinions, whether the author supports them well.<sup>67</sup> Readers should be tuned in to seeing fallacies in any logic presented, such as generalizations, faulty authority, and conclusions that are not a logical result of the facts given.<sup>68</sup> Readers also should be tuned in to discovering whether arguments are inductive (begins with facts, leading to conclusion) or deductive (states a conclusion and justifies it) so that they may more properly follow them.<sup>69</sup> Active reading includes following any quantitative analysis, evaluating the reliability of anecdotal material supplied, and personally deciding whether the evidence is sufficient to accomplish the point.<sup>70</sup> It is quite difficult to evaluate the evidence without either completing the pre-reading stages or actively questioning the material.<sup>71</sup>

An ultimate goal of the "reading" stage should be to organize the piece into a manner that allows the reader a fuller understanding.<sup>72</sup>

65. See Craig M. Klugman, *Skills Sheet: Critical Reading*, University of Nevada, Reno at <http://unr.edu/homepage/cm/cread.htm> (last visited Nov. 2, 2004).

66. See Camille Wells, *Reading Critically*, University of Mary Washington, at <http://departments.mwc.edu/hipr/www/101-01/critread.htm> (last visited Nov. 2, 2004).

67. See *Critical Reading*, Youngstown State Univ., Writing Center, at <http://karn.ohiolink.edu/~sg-ysu/critread.html> (last visited Nov. 2, 2004).

68. See *Fallacies in Logic*, Colorado State University Department of English, The Writing Center, at <http://writing.colostate.edu/references/teaching/co300man/pop7h.cfm> (last visited Nov. 2, 2004). Other noted fallacies included presenting the conclusion as truth, diverting the reader from the main issue, misapplying temporal connections, and arguments ad hominem. See *id.*

69. See *Inductive and Deductive Reasoning*, San Jose State Univ. <http://www2.sjsu.edu/depts/itl/graphics/induc/ind-ded.html> (last visited Dec. 23, 2004).

70. See Wells, *supra* note 66.

71. See Debra Knott, *Critical Reading Towards Critical Writing*, University of Toronto, at <http://www.utoronto.ca/writing/critrdg.html> (last visited Nov. 2, 2004).

72. See generally Ted Lardner & Todd Lundberg, *Exchanges*, Addison Wesley Longman, available at [http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner\\_awl/chapter1/deluxe.html](http://occawlonline.pearsoned.com/bookbind/pubbooks/lardner_awl/chapter1/deluxe.html) (last visited Nov. 2, 2004) (applying analysis from chapter titled "Critical Reading Techniques").

This may include "rewriting" a piece in a manner that makes logical sense to the reader, an exercise that goes beyond outlining.<sup>73</sup> It may include naming sections of the text differently and explaining both what a portion of the text says and what it accomplishes.<sup>74</sup> Readers also may want to summarize and expound upon the author's attitude, how each section connects to others, and the reader's reaction to each section.<sup>75</sup> All of these "active reading" techniques help to deepen understanding.

### C. Post-Reading

Critically reading does not end with the actual beginning-to-end reading of any material. In order to actually create meaning within text, and extend the understanding through the pre- and actual reading stages, all material should be connected to post-reading writing tasks, which should begin immediately.<sup>76</sup> These tasks may include summarizing, evaluating, or synthesizing. The tasks can be responsive or specifically tied to an assignment. For example, a casual reader may write a letter to an editor based on a periodical article, or prepare information for a book club meeting.

In the academic world, the post-reading material should not jump to the examination stage, which often represents the first time students are asked to write about materials read during a course. Instead, the course structure should include these exercises throughout the semester providing periodic feedback to students throughout the academic experience.

While preparing for a post-reading activity, the reader should remain aware of how specific portions of material fit within the prior reading. In other words, the reader should be careful not to lose the forest for the trees in a post-reading activity. Using other works covering similar materials may help the reader see the big picture as to an issue.<sup>77</sup> Readers may want to discuss whether different writings use different tactics (such as logic versus appeal to fear) to make a point,

73. See *id.* (applying analysis outlined in subsection of "Critical Reading Techniques," titled "The Process: Reviewing").

74. See *id.*

75. See *id.*

76. See Varaprasad, *supra* note 20; see also Teaching Resource Center, *Practical Tips for Reading Critically*, University of California, Berkeley, at [http://gsi.berkeley.edu/resources/discussion/read\\_crti.html](http://gsi.berkeley.edu/resources/discussion/read_crti.html) (last visited Nov. 2, 2004).

77. See *Critical Reading Strategies*, at [www.southlakems.org/critical\\_reading\\_strategies.htm](http://www.southlakems.org/critical_reading_strategies.htm) (last visited Nov. 2, 2004).



and discuss the results of those techniques.<sup>78</sup> Additionally, readers might want to consider what information or arguments were *not* in the writing, and why.<sup>79</sup>

Post-reading activities also may transform the material. Rather than turning writing that is read into more similar writing, a post-reading activity could take place in the form of artwork, fiction, poetry, or an oral activity.<sup>80</sup> Each of these acts can help “reveal” the student’s level of understanding.

#### D. Teaching Critical Reading

Critical reading can be taught.<sup>81</sup> The cardinal rule of teaching critical reading is that when introducing the technique to a group of students—most of whom may never have had to engage these extensive pre-, actual, and post-reading steps—the piece in question should easily allow novice critical readers to accomplish each step.<sup>82</sup> Teachers should encourage and explain the pre-reading skills, which may assist readers to “activate prior knowledge” and prepare them for the reading stage.<sup>83</sup>

Teachers must give the students the context of the assignment, and provide an assignment with broad enough appeal to encourage students through the pre-reading steps to consider formats and questions. The material must be short enough (or divided into short enough sections) to be skimmed, then actively read, outlined, researched, and finished off by the completion of post-material exercises done under the supervision of the teacher.<sup>84</sup> In addition, it is important to communicate to a class that critical *reading* skills are connected to critical *listening* skills, where students listen to lectures not just for information but for ways of thinking about the material.<sup>85</sup>

78. See UNILEARNING, HOW TO READ CRITICALLY: CRITICAL READING CHECKLIST, at <http://unilearning.uow.edu.au/reading/2b.html> (last visited Nov. 2, 2004).

79. See *id.*

80. See Norma Decker Collins, *Teaching Critical Reading Through Literature*, World of Education, at <http://library.educationworld.net/a7/a7-100.html> (last visited Nov. 2, 2004); see also Daniel J. Kurland, *The Goal or Assignment: How Will You Read?*, at <http://www.criticalreading.com/step3.htm> (last visited Nov. 2, 2004).

81. See Varaprasad, *supra* note 20.

82. See *id.*

83. See Decker Collins, *supra* note 80.

84. See Varaprasad, *supra* note 20.

85. See Knott, *supra* note 71 (applying number five in subsection titled “Some Practical Tips”).

No student, learning to critically read, can accomplish these steps the first time without careful guidance.

Teaching critical reading is not an easy task. Theorist Stanley Fish, noted that reading is active and requires the reader to create the text as they understand it while they read.<sup>86</sup> Students, however, need to be taught that they may not necessarily interpret the text “at whim,” but rather must do so within the context and community in which it is presented.<sup>87</sup>

A teacher incorporating critical reading instruction into a class must think broadly when preparing to teach. Students must be prepared with supporting materials—reference materials, proper writing instruments, and proper physical space—to accomplish the task.<sup>88</sup> Students may not consider these issues and the teacher must incorporate them into the explanation. Thus, teaching critical reading is a big task and teachers will want to select specific and narrow goals for the lesson in reading that they want to accomplish.<sup>89</sup>

### III. METACOGNITION THEORY AND CRITICAL READING WITHIN THE LEGAL WRITING CLASSROOM

To facilitate critical reading within legal writing classes, teachers should first consider four factors that affect student reading: (1) students in a class use a variety of learning styles; (2) students use different skills to master different learning levels; (3) students use different reading strategies when they critically read; and (4) students need a complete learning experience to turn the critical reading into critical thinking. All of these factors come into play when fashioning critical reading opportunities in a legal writing course.

First, teachers should recognize that not all students absorb information through written texts. Students engage in different learning styles to process information.<sup>90</sup> Therefore, assisting novice legal

86. STANLEY FISH, IS THERE A TEXT IN THIS CLASS?: THE AUTHORITY OF INTERPRETIVE COMMUNITIES 327 (1980) (“Interpretation is not the art of construing but the art of constructing. Interpreters do not decode poems; they make them.”).

87. *Id.* at 335 (“Once one realizes that the conceptions that fill consciousness, including any conception of its own status, are culturally derived, the very notion of an unconstrained self, of a consciousness wholly and dangerously free, becomes incomprehensible.”).

88. See Kurland, *supra* note 80.

89. See *General Strategies for Critical Reading*, Colorado State University Department of English, The Writing Center, at <http://writing.colostate.edu/references/teaching/co300man/pop7a.cfm> (last visited Nov. 2, 2004).

90. Cf. M.H. Sam Jacobson, *How Law Students Absorb Information: Determining Modality in Learning Style*, 8 LEGAL WRITING 175, 179-82 (2002).

readers become expert readers requires offering students a complete learning experience accommodating the various learning styles. M.H. Sam Jacobson suggests that teaching strategies accommodate five different learning types: (1) verbal learners who absorb information from reading or writing; (2) visual learners who absorb information through pictures, diagrams, and other information models; (3) oral learners who absorb information through discussion; (4) aural learners who absorb information by listening; and (5) tactile and kinesthetic learners who absorb information through experiential activities such as role-playing, simulations, and clinical experiences.<sup>91</sup>

Students not only have different learning styles, they also must use their learning styles to master different levels of learning. Bloom's *Taxonomy of Educational Objectives* recognizes six different levels of learning: (1) knowledge derived from memorization; (2) comprehension; (3) application; (4) analysis; (5) synthesis; and (6) evaluation.<sup>92</sup> Thus, students with varying learning styles must master six different levels of learning. This can be accomplished when students are provided a complete learning experience that incorporates an element of self-awareness. According to Jacobson, a complete learning experience for all types of learners involves four different stages, each with equal importance: having an experience, reviewing the experience, concluding from the experience, and doing something with the experience.<sup>93</sup> Therefore, effective critical reading strategies must include a variety of activities that will address students' diverse learning styles and enable students to master the different learning levels.

A key component to addressing individual student needs is an awareness of the level of student involvement in the reading process. Readers use strategies to help them understand text. Empirical studies suggest that there are significant differences between the strategies used by novice readers and more experienced readers of legal materi-

91. See M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 151-56 (2001). Jacobson suggests that visual learners benefit from highlighting text in different colors and making analytically focused margin notes; oral learners thrive when given opportunities to discuss their thoughts with the professor, in study groups and with teaching assistants; aural learners do best by sitting in the front of the classroom and taping and replaying class discussions; and tactile and kinesthetic learners gain when they involve themselves in simulations, role-playing and clinical experiences. *Id.*

92. See A COMMITTEE OF COLLEGE & UNIVERSITY EXAMINERS, *TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS, HANDBOOK 1: COGNITIVE DOMAIN* (Benjamin Bloom ed., David McKay Company, Inc. 1956).

93. See Jacobson, *supra* note 91, at 170.

als. Peter Dewitz has applied metacognition theories to the exercise of critical reading and concluded that the difference between novice readers and accomplished expert readers is that accomplished readers self-monitor their reading comprehension and repair comprehension difficulties through re-reading, summarizing, making inferences, and consulting outside sources.<sup>94</sup> According to Dewitz, student readers must engage in metacognition, what he refers to as "thinking about thinking," in order to master challenging legal texts when they read.<sup>95</sup> Metacognition involves student self-awareness of the effects that different learning processes have on the ability to absorb information.<sup>96</sup> Students who engage in metacognition are aware of how they learn and recognize which learning processes work best for them.<sup>97</sup> Students who use megacognition strategies read in different ways, depending on the intended purpose of the assignment.<sup>98</sup> They recognize their own abilities with respect to a learning situation and devise strategies that work for them. They also self-regulate, monitor, and make adjustments to optimize their learning experiences and adjust to the purpose of the assignment.<sup>99</sup>

Dewitz based his hypothesis on the empirical studies and writings of Mary A. Lundeberg, Dorothy H. Deegan, Laurel C. Oates, Elizabeth Fajans, and Mary Falk. Lundeberg, Deegan, and Oates have conducted empirical studies of law school readers involving the metacognition element of reading through "think-aloud" protocols.<sup>100</sup> Empirical researchers believe that think-aloud protocols provide valid data collection on cognitive processes.<sup>101</sup>

Lundeberg was the first researcher to use a metacognitive approach to study the way legal readers read text. Lundeberg compared the techniques expert readers used to read cases with techniques novice student readers used and found that expert readers used evaluation

94. Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 229 (1997).

95. *Id.*

96. See Jacobson, *supra* note 91, at 142.

97. *Id.*

98. See Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471, 475-76 (1987) ("[S]tudents using metacognitive processes would recognize that class assignments should be read one way if the goal of reading is memorization, and another way if the goal of reading is generation of ideas for an original research paper.").

99. *Id.*

100. See discussion *infra* pp. 116-19. These protocols involve read-aloud techniques.

101. See Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 144 (1997).

strategies more often than novice readers.<sup>102</sup> Lundeberg asked ten expert readers—law professors and lawyers—and ten novice readers to think-aloud as they read an appellate court opinion.<sup>103</sup> Readers were encouraged to verbalize their thoughts as they read the text of materials.<sup>104</sup> The study indicated that the expert readers first previewed the opinion, noting the names of the parties, the date of the opinion, and the court and author of the opinion.<sup>105</sup> Expert readers stopped to summarize the facts and were likely to draw a diagram of the lawsuit, while the novice made little mention of the facts.<sup>106</sup> Furthermore, expert readers were more likely to re-read the opinion analytically, evaluating it, synthesizing the facts, rules, and rationale of the case, and pondering hypotheticals.<sup>107</sup> Novice readers, on the other hand, expressed confusion about legal terms, contextually defined words, and added incorrect information to the materials.<sup>108</sup> Lundeberg suggests that students read cases using the following procedure: (1) place the case in context by examining the citation and titles; (2) read the case for an overview; and (3) reread the case analytically.<sup>109</sup> This procedure encompasses the actual steps of critical reading.

Dorothy H. Deegan found similar significant group differences in a study using a think-aloud approach to ascertain the conscious reading processes of law students who had just finished their first year of law school.<sup>110</sup> In Deegan's study, students who ranked at the top and the bottom of the first-year class were required to read a 1400-word law review article as if they were preparing to read it for a class discussion.<sup>111</sup> As they read, students were asked to verbalize their active thinking processes. During the reading sessions, pencils and pens were made available to the students for highlighting, underlining, and

102. See Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 *READING RES. Q.* 407, 411 (1987).

103. *Id.* at 410.

104. *Id.* at 411. Lundeberg used prompts to elicit responses, for example, "What are you looking at?" Another example was, "What are you smiling at?" She would also ask questions directed at participants' specific behaviors. For example, she would ask, "I noticed that before you read the case, you flipped to the end and marked something. What did you mark?" *Id.*

105. *Id.* at 413.

106. *Id.* at 414.

107. *Id.*

108. *Id.* at 415.

109. *Id.* at 430-32.

110. See generally Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 *READING RES. Q.* 154 (1995).

111. *Id.* at 158-59.

annotating the text. A dictionary was also available for student use.<sup>112</sup> At the pre-reading stage, students were asked what they were going to do first. During the reading stage, Deegan interrupted readers periodically and asked for a continuing verbal report of what they were thinking and doing as they read the text.<sup>113</sup> Some students read the entire article more than once, while others first skimmed the article before reading it.<sup>114</sup> After finishing the article, students were asked to provide a recitation of what the text said and meant.<sup>115</sup> Although students could refer to the text as they gave their recitation, they were not permitted to reread the article.<sup>116</sup> Deegan analyzed the students' comments and organized the responses into categories encompassing reading strategies such as connecting parts of texts, noting detail, summarizing, questioning, connecting with prior knowledge, locating information, voicing confusion, evaluating ideas, paraphrasing, re-reading, hypothesizing, and drawing conclusions.<sup>117</sup>

Deegan found that the students who ranked at the top of the first-year class used different reading strategies than those who ranked at the bottom of the class.<sup>118</sup> Regardless of success, the students harbored "insecurity and anxiety about reading."<sup>119</sup> Deegan categorized the different reading strategies as either problematizing, nonproblematic default, or rhetorical.<sup>120</sup> Problematizing strategies included responses associated with problem solving, such as questioning, hypothesizing, predicting, and noting anomalies and breaks in logic.<sup>121</sup> Default strategies were characterized as responses that did not arise from questioning, such as paraphrasing, underlining, making marginal notes, and retelling.<sup>122</sup> Rhetorical strategies encompassed responses that considered the author's purpose, context for the text, and the effect on the audience.<sup>123</sup> Deegan compared only problematizing and default strategies because she found no difference in the use of rhe-

112. *Id.* at 159.

113. *Id.*

114. *Id.* at 167.

115. *Id.* at 159.

116. *Id.*

117. *Id.* at 160-62.

118. *Id.* at 162-63.

119. *Id.* at 168.

120. *Id.* at 160-62.

121. *Id.* at 160.

122. *Id.* at 161.

123. *Id.*

torical strategies by the different student groups.<sup>124</sup> The better students used problematizing strategies 58.9% of the time to process the text, while the weaker students used problematizing strategies only 44.7% of the time, relying instead on default strategies 40.3% of the time.<sup>125</sup> Deegan found that "this difference in strategy use significantly contributed to performance differences."<sup>126</sup> For example, the recitation of one of the lower-performing students contained only 36% of the most important ideas of the text.<sup>127</sup> Deegan concluded that this student's problematizing strategy was deficient because of a misreading of the text and a misunderstanding of key words and phrases.<sup>128</sup>

Laurel Oates also used a think-aloud approach to study and compare reading strategies of five subjects: four students admitted through an alternative admissions program and a law professor whom she considered to be an expert legal reader.<sup>129</sup> Oates chose the student readers with the highest and lowest first-semester grades from a group of eight volunteers.<sup>130</sup> The readers read four pages from a Torts casebook.<sup>131</sup> Pens, highlighters, paper, and dictionaries were readily available to the readers, who were encouraged to stop and describe their thinking process after every sentence or two.<sup>132</sup> Oates found that the expert law professor used Lundeberg's expert reader strategies more often than the novice readers.<sup>133</sup> Before reading the opinion, the law professor read the caption and identified the court and year.<sup>134</sup> The expert reader then visualized what happened in the case and predicted the court's ruling, holding, and rationale before completing the reading.<sup>135</sup>

Oates found a marked difference between the number of evaluative statements made by the expert reader and the novice readers.<sup>136</sup> She found that 52% of the law professor's responses questioned or in-

124. *Id.*

125. *Id.* at 163.

126. *Id.* at 164.

127. *Id.* at 165.

128. *Id.*

129. Oates, *supra* note 101, at 145.

130. *Id.* at 145.

131. *Id.* at 146.

132. *Id.* at 146-47.

133. *Id.*

134. *Id.*

135. *Id.* at 148, 150.

136. *Id.*

terpreted the text; 25% evaluated or synthesized; and 17% paraphrased the text.<sup>137</sup> Although three out of the four students questioned and interpreted the text in nearly 50% of their responses, the percentage of the students' statements found to be evaluative were below 9% of the total responses.<sup>138</sup> The remaining student, who was one of the weaker students, primarily paraphrased the text in her responses.<sup>139</sup> Like Deegan, Oates also found a difference in the reading strategies of the high-performing and low-performing students.<sup>140</sup> Based on the data, Oates hypothesized that students who perform well during their first year of law school use more of the expert reader strategies than do the students who do not perform as well.<sup>141</sup>

Elisabeth Fajans and Mary R. Falk experimented with metacognitive techniques and New Rhetoric methodology in an advanced legal writing seminar, where they focused on "close reading" of judicial opinions.<sup>142</sup> Students were required to read beyond the words on the page; to look for, react to, and analyze "literary style and jurisprudential or interpretative posture—and for what is not there at all—legal and historical context and omissions of fact or lapses in logic."<sup>143</sup> Based on their experiences with close reading techniques, Fajans and Falk suggest using metacognitive techniques in the law school classrooms to assist law students to go beyond the first legal reading level of "denotative, case-briefing" practices to the second more reflective level where students respond to text and reflect on their responses, and finally to the highest legal reading level of selection and synthesis.<sup>144</sup> Fajans and Falk advocate requiring students to react to and analyze the text of judicial opinions rather than just "summarize and paraphrase."<sup>145</sup> They suggest requiring both individual and group metacognitive activities such as reflecting and responding to their reading experiences in reading journals and using think aloud tech-

137. *Id.* at 149.

138. *Id.*

139. *Id.*

140. *Id.* at 148.

141. *Id.* at 160.

142. Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 167 (1993). Fajans and Falk define New Rhetoric as "a theory of composition stressing the writing process itself and the rhetorical situation latent in every writing project." *Id.*

143. *Id.* at 169-70.

144. *Id.* at 164, 190-91.

145. *Id.* at 169, 170.

niques in group settings within the law school classroom.<sup>146</sup> These techniques enabled students in their course to recognize the differences between the “response and analysis aspects of the reading transaction.”<sup>147</sup>

Dewitz suggests that teachers remove the mystery that surrounds reading and understanding legal materials by teaching students about structure and organization of materials and by teaching the various reading strategies used by expert legal readers.<sup>148</sup> Dewitz surmises that because they are deficient in background knowledge<sup>149</sup> and text structure knowledge,<sup>150</sup> and prone to reading strategies that hamper their ability to critically read,<sup>151</sup> novice legal readers need to be taught to rely on the author’s pattern of organization to help them locate important information and understand the text.<sup>152</sup> He suggests that teachers use charts, graphs, and semantic maps to provide students with a preview of the concepts and key terms of what they will find in the readings so that they have the necessary background knowledge to understand a reading.<sup>153</sup> Dewitz also suggests that teachers explain the structure of a case and provide students with reading guidelines modeled after Lundeberg’s three-step process for reading cases.<sup>154</sup> Dewitz advocates using the guidelines and a think-aloud technique to walk students through the reading process.<sup>155</sup> As part of this process, teachers should encourage class discussion about the reading strategies that the students found to be most useful.<sup>156</sup> Dewitz believes that instructing students and providing them with modeling opportunities will prepare students to use metacognition techniques to independ-

146. *Id.* at 202.

147. *Id.* at 198.

148. Peter Dewitz, *Reading Law: Three Suggestions for Legal Education*, 27 U. TOL. L. REV. 657, 672 (1996).

149. *Id.* at 657-58. Dewitz explains that the knowledge a reader possesses about a particular domain is the key to comprehending text. A novice legal reader lacks the knowledge of case law, jurisprudence, and legal theory possessed by an expert legal reader. *Id.*

150. *Id.* at 658-59. According to Dewitz, comprehension is facilitated when a reader has an understanding of the structure and organization of a text. Expert legal readers use what they know about the different parts of a case to understand the text. *Id.*

151. *Id.* at 659.

152. *Id.* at 665.

153. *Id.* at 666.

154. *Id.* at 669-71. Lundeberg suggests having students first place the case in context, then read for an overview, and finally reread analytically. *Id.*; see discussion *supra* notes 102-09.

155. See *id.* at 665.

156. *Id.* at 671.

ently self-monitor their reading strategies and understanding of legal texts.<sup>157</sup>

Robin Boyle recommends incorporating active learning techniques with a metacognitive element into law school classes, enabling students to “learn by doing.”<sup>158</sup> Boyle concludes that the empirical studies and writings of Lundeberg, Deegan, Davies, Oates, Fajans, and Falk show that passive student readers do not absorb material as well as student readers who are actively engaged.<sup>159</sup> She suggests requiring students to formulate questions to ask when reading cases and other active learning activities with a self-monitoring component that would encourage critical reading.<sup>160</sup>

Based on metacognition theory and earlier studies and writings, the authors of this Article designed class exercises intended to introduce students to various critical reading strategies that would encourage critical thinking strategies. These studies and writings provide a framework for creating meaningful critical reading exercises.

#### IV. CRITICAL READING EXERCISES

In preparing to teach novice law student readers, we started with the cardinal rule of teaching critical reading—select a simple piece to read that would encourage the student to accomplish all the stages of critical reading. We knew that our ultimate goal was to have our first-semester, first-year law students (1Ls) critically read a case, while we guide them through the pre-, active, and post-reading stages. However, case reading is still a new skill to 1Ls, and we had concerns about conducting our “experiment” in critical reading with two variables—new reading techniques and new format of material (cases). Therefore, we decided that in order to teach critical reading to 1Ls, we needed to take a two-step approach.

The first step in our approach was to teach these new critical reading skills. In order to isolate those skills from the unfamiliarity and scariness of law school, we decided to use non-legal, non-threatening material that the law students could read easily. Once we had “walked” them through the new steps and techniques of pre-

157. *Id.* at 669-70.

158. Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 UNIV. DET. MERCY L. REV. 1, 14-17, 23 (2003).

159. *Id.*

160. See *id.* at 17.

reading, active reading, and post-reading, they would then be prepared to repeat these steps with the legal material.

Each being parents of two children, we concluded from personal experience that some of the most enjoyable, non-threatening written material could be found in the works of Dr. Seuss. We believed the works of Dr. Seuss would be within a majority of law students' personal experiences, and thus be a safe launching ground for the new skills training.<sup>161</sup> However, Dr. Seuss published dozens of well-known books in his lifetime, and choosing a book that met the needs of teaching critical reading proved more difficult than we expected. Our first goal was to eliminate any story, no matter how well-known, that was too lengthy. Pre-reading, reading, and post-reading activities needed to be accomplished in one 75-minute class session.<sup>162</sup> In addition, we sought to eliminate any stories that may have been interpreted in the public media as having any potentially inflammatory messages, and any material that may have been used in other upper-level academic studies, such as "The Lorax" for its environmental message.<sup>163</sup>

Within "The Sneetches," a collection of stories published in 1961, we found three stories. The first was the title story known for its social tolerance message, and the last was an amusing story about tolerance, entitled "What Was I Afraid Of?," detailing the story of a child who was afraid of an empty pair of pants that turned out to be

161. Dr. Seuss (Theodor Geisel) appears to have gotten his start to promote reading skills of children. Biographies of Seuss note that, in May 1954, *Life* magazine published a report detailing that children were having trouble reading because "books were boring." Allegedly, this prompted Geisel's publisher to send Geisel a list of 400 "important words" with the charge of cutting it to 250, which at the time was that publisher's idea of how many words a first-grader could absorb at one time. Lore has it that Geisel took 220 of those words and published the smash-success book "The Cat in the Hat." David Bedno, *A Brief, Rough Biography of Dr. Seuss*, at <http://www.seuss.org/seuss/seuss.bio.html> (last visited Nov. 1, 2004).

162. At Nova Southeastern University Shepard Broad Law Center, the Fall semester of Lawyering Skills and Values I is taught in two 75-minute blocks per week.

163. A nonacademic discussion one author had regarding Dr. Seuss works revealed that there was a line of argument that Dr. Seuss promoted the "right to life" party in his classic work "Horton Hatches an Egg." Although without actual source of the material, it was told to one author that the famous catch-line of that story "A person's a person, no matter how small" was actually an anti-abortion stance. Although we had no documentation of that interpretation, we avoided that material, as the purpose of the story was not to foster political discussion but to teach critical reading techniques.

just as afraid of him.<sup>164</sup> Nestled between these stories was our gem: the short, direct, and puzzling story of the Zax.<sup>165</sup>

*The Zax* is a very brief story<sup>166</sup> of two races—the "North-going" Zax, and the "South-going" Zax—who always go North or South, respectively, depending on their inborn predilection.<sup>167</sup> In the story, these two Zax(es?)<sup>168</sup> met face to face, resulting in a total stoppage of travel.<sup>169</sup> While these two stubborn creatures refuse to budge from their intended paths, the world must progress and develop around them.<sup>170</sup>

Our first step in preparing critical reading materials for *The Zax* was to plot our pre-reading, active-reading, and post-reading arc. We began with the pre-reading context, covered in class immediately after the distribution of the story. We each began our critical reading class by explaining the concept of critical reading. We told the students that the class was going to learn techniques to accomplish that goal. There were surprised and puzzled expressions on the students' faces as they reached for the first handout and discovered they were reading a rhyming Dr. Seuss story. We had captured their interest immediately.

We explained the pre-reading steps—context and examination of the material. Together the class discussed the context of the material. We explained the publication (*The Sneetches*), when the story was published, and the nature of the other stories in the text.<sup>171</sup> The students examined the length and format of the story. They looked at the pictures of the Zax and the book from which the story came. At that point, the students skimmed the material.

The pre-reading stages completed, we explained techniques of active reading. Together, the class accomplished these while reading. The class annotated, highlighted, made notes and outlined, and researched and questioned. The professor acted as the reference guide.

164. DR. SEUSS, *Sneetches: The Zax*, in A HATFUL OF SEUSS 204 (Dr. Seuss Enterprises, L.P. comp., Random House 1996) (1961).

165. *Id.*

166. Without pictures, the 277-word text is published on the Internet in just one page of stanza.

167. *Id.* at 205.

168. The authors never did finally determine the plural of "Zax."

169. Dr. Seuss, *supra* note 164, at 206, 210.

170. *Id.* at 213.

171. The book *The Sneetches* was originally published in 1961. It contained 4 stories: *Sneetches*, *The Zax*, *Too Many Daves*, and *What Was I Scared of?*. Dr. Seuss, *supra* note 164.

Many students inquired, "What is a Zax?" The answer given by the professor was that there were two definitions. The first was from *dictionary.com*, in which it defined a "zax" as a tool for trimming.<sup>172</sup> The second was from the index to Dr. Seuss by Ray Hamel, which listed a Zax as an imaginary creature appearing in the Zax story.<sup>173</sup> We discussed evaluating this evidence and learning to use our research with meaning.

Students also asked, "What does it mean to be 'north-going' or 'south-going'?" The only information the resource found on that topic, other than the common definition of north and south, was an article entitled, "Reproductive Habits of the North-Going Zax," which pondered that all North/South Zax were male; female Zax traveled east/west and after intersecting with male Zax would produce future Zax.<sup>174</sup>

In addition, the active reading of material engaged students in a discussion of themes in the story. Various published interpretations of this story discuss themes of stubbornness, power, change, living by rules, and the importance of flexibility and compromise.<sup>175</sup> Students questioned, outlined, and pondered. We even had the students engage in an alternative activity of re-enacting the story line. This mode of nonwriting activity engages tactile and kinesthetic learners and ensures a level of understanding that may reach students in a different way.

In preparation for our post-reading activity, we "briefed" the Zax as we would a case. Our facts were as follows: In Prax (the jurisdiction), a North-going Zax and a South-going Zax came face to face.

172. AMERICAN HERITAGE DICTIONARY (4th ed. 2000), at <http://dictionary.reference.com/search?q=zax> (last visited Nov 1, 2004).

173. Ray Hamel, *An Index to Dr. Seuss: Characters and Unusual Creatures*, at <http://www.primate.wisc.edu/people/hamel/seuss.html> (last visited Nov 1, 2004). Although a frustrating self-referential definition, such is good practice for the novice law student who may later find definitions in the Uniform Commercial Code to be similarly structured.

174. Mark-Jason Dominus, *Reproductive Habits of the North-Going Zax*, at <http://www.plover.com/~mjd/otherwork/zaxen.html> (last visited Nov. 1, 2004).

175. Rev. Amy B. Freedman, *Democracy and Liberal Religion*, at <http://www.mindspring.com/~alisondre/Archives/Talks/2000/1105democracy.html> (last visited Nov. 1, 2004); Ellen Schmidt & Diana Pavao, *Lesson from Dr. Seuss: A Church School Curriculum for the Kindergarten*, at <http://www.rec-room.org/REsources/drseuss.html> (last visited Nov. 1, 2004); R.E. Classes for April Sundays, THE CONNECTION, April 2004, at 3, <http://www.universityus.org/Connection/Apr04/ConnectionApr04.pdf> (last visited Nov. 1, 2004); *Illinois State Bar Associate Law Day Activity Guide*, <http://www.illinoisbar.org/Sections/lawday.pdf> (last visited Nov. 1, 2004).

Neither would move. They stayed there and the world was built around them.

The issue of this story was, "Does the world stand still even if Zaxes don't budge?" The result (the holding) was, "No, the world does not stand still because civilization was built over and around the Zaxes." A narrower, more fact-specific holding was that the two Zaxes did not move and a bridge was built over them; and despite their speculation that it might happen, the world did not stop. The rules in the case were very specific, at least as to Zax behavior: Zaxes may not budge in the least, not an inch to the west, not an inch to the east. Zax will not move upon request of the other Zax, they will not take a step to the side (not even in 59 days or 59 years), not even if it makes the world stand still.

From this point, we distributed to the students a worksheet (Appendix 1) for a post-reading activity. This worksheet required the students to apply what they learned. The questions specifically assessed the students' level of understanding. The students had to write answers to these questions, including, "What facts were important to telling this story?" and "What rules did you find operating in the story?" Students worked in small groups, and then pondered a "what if" question: What if a North-going Zax reaches the North Pole and a South-going Zax reaches the South Pole? The question was designed to reinforce the application and understanding of the story.<sup>176</sup>

Once the Zax reading was mastered, the class turned its attention to applying its new critical reading skills to legal material. We chose a case that the students were assigned in preparation for their "closed" universe memorandum of law.<sup>177</sup> Students already were familiar with the case—at least, they should have been.<sup>178</sup> Students already had the fact pattern and case materials leading up to the closed memorandum

176. Mark-Jason Dominus, *Reproductive Habits of the North-Going Zax*, <http://www.plover.com/~mjd/otherwork/zaxen.html> (last visited Nov. 1, 2004). The article theorized on the thorny issue of what happened when the North/South Zaxes reached the respective Poles. It notes that the story clearly states the North-going Zax declares that his father and grandfather were both North-going Zaxes before him, discarding the theory that they alternate directions each generation. *Id.* This explanation and our students' post-reading exercise led to a lively classroom discussion.

177. In the first semester of the LSV program, students write two memoranda of law. The first memorandum is objective in focus, and is based on three cases supplied to the students by the professor. The second, also objective, incorporates research skills and is given the traditional "open" title. The case that the students read in conjunction with *The Zax* was *Harris v. Economic Opportunity Commission of Nassau County, Inc.*, dealing with the issue of raffles constituting an illegal lottery. 575 N.Y.S.2d 672 (N.Y. App. Div. 1991).

178. Students were assigned to "skim" this case before coming to class.

of law, although it was the fifth class, taught in the third week of the semester (Class 5 of 28), that case analysis had not yet been covered.

We began the critical reading exercise again using the same pre-reading skills as we used when reading *The Zax*. We assisted the students in placing the case in context (it was to be used with the upcoming assignment) and the other cases assigned to the project. Students examined the jurisdiction, court, and parties as part of this first step.

We then engaged the students in an active reading of this case and engaged in a higher-level discussion than mere case briefing information. We discussed the differences between reading a case in preparation for future analysis in a legal memorandum and learning a past doctrine. We went beyond the traditional Facts/Issues/Holding analysis commonly used—we did so by having students outline and question, and evaluate, not merely highlight and reiterate.

We then moved into the post-reading stage, which, were it not for this critical reading exercise, might have been a first draft of a memorandum. Instead we distributed a set of questions similar to what they had answered for *The Zax* (Appendix 2). Although obviously covering a different subject matter, the active reading skills the students applied were exactly the same as with *The Zax*. They evaluated what they had learned, and considered a hypothetical. Once that exercise was completed, they had then “critically read” this one case. The goal, of course, was that, on their own, in preparation for writing their first legal memorandum, they would reproduce this skill set as applied to the other cases in the assignment.

Although the result may not have shown itself in ultimately “better” memorandums (it is indisputable that more than critical reading is needed to produce a legal memorandum), both professors noted a difference in subsequent classes, leading up to the production of a legal memorandum approximately one month later. When students had questions about the cases, we referred them to their critical reading skills and found that students, when encouraged, could answer their own questions and solve many of their own problems. By the end of the first semester, students appeared to be more aware of the reading strategies they were using. We found that we were able to take the legal discussion of the issue to a higher level.

Armed with a belief that continued reinforcement would have an impact on the analytical and writing skills of our students, we continued to reinforce the importance of critical reading strategies throughout the two-semester lawyering skills course. We offered students active learning exercises using familiar materials that would provide

them with opportunities to “think about thinking.” Some of the exercises that we developed were based upon ideas presented at legal writing conferences. We found it easy and beneficial to incorporate short stories, newspaper articles and editorials, song lyrics, and advertisement jingles into active learning activities and assignments. We identified the purpose of each exercise and encouraged students to self-monitor their reading, thinking, and learning strategies. We then developed follow-up assignments requiring students to evaluate, synthesize, and respond to the materials, enabling them to assess their level of mastery of the material.

One of the exercises that we used early in the semester to reinforce the introductory reading skills involved a simulation where class groups were assigned roles in the production of a television movie based on a case. The case had been an out-of-class reading assignment. We chose another case that students would be using to write an analysis in the closed memorandum of law. In class, students were assigned to groups of five and were told that they would simulate producing a television movie of the case and that the exercise would help them to visualize the case they had read.<sup>179</sup> Students were provided with markers and large pads. Two groups were assigned the task of casting the roles of the parties, judge, and attorneys. Two other groups were directed to diagram the plot using visual aids. Another two groups were told to diagram the character development using visual aids. The group members were encouraged to think-aloud as they arrived at a final product. Each group designated a scribe to record the thinking processes of members of the group. Once the groups completed their tasks, a lively discussion followed in which students offered their suggestions and explained the what, how, and why of their products. Each scribe offered observations of the group’s thinking processes by providing examples of statements and responses. As a post-class assignment, students were required to re-read the case and to write a commentary in light of their classroom experience. By writing the commentary, the reading exercise evolved into a critical thinking and writing exercise.

179. This exercise is a variation of active reading exercises suggested by M.H. Sam Jacobson and Sheila Simon. Jacobson, *supra* note 91, at 153; Sheila Simon, *Teaching Active Reading*, 8 THE LAW TEACHER 11 (2001). Jacobson suggests that an exercise allowing students to visualize the case as a play or television show enhances the reading experience for visual learners. Jacobson, *supra* note 91, at 153.



We also developed teaching strategies using familiar materials such as magazines, newspapers, and song lyrics.<sup>180</sup> In one class, we introduced students to the ambiguity of language in case opinions by having them listen to and critically read the lyrics of a familiar song.<sup>181</sup> We chose "Puff the Magic Dragon" because students were familiar with the lyrics and the language is susceptible to several interpretations.<sup>182</sup> We played the song several times and encouraged students to join in a karaoke sing-along. We then asked students to read the lyrics line by line, interrupting them to ask what the line meant and how the student responded to the language and meaning of that line. Students offered different interpretations of segments of the lyrics and explained, using their prior knowledge and experiences, why they thought their interpretation was valid. We found this exercise to be an excellent introduction into reading, recognizing, and questioning ambiguous language in legal text of court opinions and statutes. As a post-reading exercise, students were required to reread the statutes and cases they were analyzing for the open memorandum of law assignment and prepare a written submission discussing the language in the text that they believed was susceptible to varying interpretations.

In addition, during the second semester of the LSV program, students were required to critically read familiar examples of written persuasion as an introduction to the concept of persuasive language in opinions and trial briefs. In one exercise, we recorded advertising jingles taped from television and radio broadcasts and played the recordings in class. Periodically, we stopped the recordings at various points and asked students to respond to the following questions: What is meant by the words? What is the advertiser trying to accomplish? How do you react to the words? What makes you react that way? Are you persuaded by the advertising campaign? What do you find persuasive? Is there anything that is unpersuasive, and if so, what is it and why is it unpersuasive? Students were then asked to read a short

180. L.L. Thistlethwaite, *Critical Reading for At-Risk Students*, 33 J. READING 586, 588-92. Thistlethwaite recommended reading activities based on the reading of tabloids, propaganda, magazine editorials, movie reviews, newspaper editorials, comparisons between books and movies of the same title, and descriptions of two historical events. *Id.*

181. Rick Graves, Address at Southeastern Legal Writing Conference (2001).

182. There has been lingering suspicion regarding this Peter, Paul, and Mary tune, written by Leonard Lipton in 1959. The controversy centers on whether this song is a coded reference to drug use, or truly an innocent children's song. The singers and writers maintain that the song is purely innocent. Barbara & David P. Mikkelson, Urban Legends Reference Page: Music (Puff), [www.snopes.com/music/songs/puff.htm](http://www.snopes.com/music/songs/puff.htm) (last visited Nov. 1, 2004).

persuasive fact statement excerpted from a trial brief and then answer questions about the factual statement similar to the questions raised about the advertising jingle. What followed was an animated class discussion of the comparisons between the persuasive aspects of advertisements and persuasive legal writing. Students compared the textual organization, characterization, and word choice of each writing. Student groups then used the experience to write a short persuasive fact statement for either a plaintiff or a defendant in a lawsuit, based on the story of Goldilocks and the Three Bears.<sup>183</sup> These drafts were used as the starting point for a class discussion in a follow-up class on persuasive writing.

We have also found newspaper editorials to be an invaluable source to introduce students to the power of persuasive writing in legal arguments. In one class, students read a relatively short newspaper editorial focusing on the persuasive and emotional language used by the writer. In groups, students dissected the language used in the editorial, as well as the sentence structure and organization of the subject matter. We encouraged student groups to use a line-by-line, think-aloud approach to respond to the subject matter and language. After critically reading the editorial, student groups drafted a responsive editorial using persuasive language. Students were then directed to examine examples of persuasive legal arguments in their legal writing text.<sup>184</sup>

#### IV. CONCLUSION

Each of the exercises used in our legal writing classes involved familiar reading materials because we hypothesized that the use of familiar materials would make it easier for students with different learning styles to grasp the strategies of expert legal readers. The exercises were designed to promote self-awareness of reading strategies and an awareness of the relationship between critical reading and critical thinking. In each exercise students were (1) involved in an experience; (2) required to self-monitor and review the experience either individually or in groups and to draw conclusions from the experience; and (3) required to use and apply what they learned from the

183. Hamline University School of Law Legal Writing Faculty, Address at Legal Writing Conference; see generally Randy Lee, *Writing the Statement of the Case: The "Bear" Necessities*, 10 WHITTIER L. REV. 619 (1989).

184. The text was HELENE S. SHAPO, MARILYN R. WALTERS, & ELIZABETH FAJANS, *WRITING AND ANALYSIS IN THE LAW* (4th rev. ed. 2003).

experience. The relative success of these classroom assignments leads us to advocate the use of familiar materials in creating exercises to facilitate critical reading and thinking in the legal writing classroom.

*Appendix 1*  
Lawyering Skills and Values  
**Fall 2003**  
Critical Reading  
*The Zax*  
Worksheet

1. What facts were important to telling the story?
2. What was the ultimate question that the characters faced?
3. What was the outcome of the story?
4. What rules did you find in the story?
5. What happens when a North-going Zax reaches the North Pole and a South-going Zax reaches the South Pole?

*Appendix 2*  
Lawyering Skills and Values  
**Fall 2003**  
Critical Reading  
*Harris v. Economic Opportunity Comm. of Nassau County, Inc.*  
Group Worksheet

1. What facts did the court use to make the decision?
2. What question(s) did the court consider?
3. How did the court answer that (those) question(s) using specific facts?
4. What is the new rule of law created?
5. What is a broader way to characterize the holding(s) and rule of law?
6. Rule and Analysis:
  - a. What rules did the court use in its decision and where did they come from?
  - b. What else did the court take into consideration in answering the question before it?
  - c. Was there any law that the court refused to use in making its decision?