

Reading Like a Lawyer

*Time-Saving Strategies for Reading Law
Like an Expert*

SECOND EDITION

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Chapter 6

Monitor Your Reading and Read for the Main Idea

Skilled readers pay attention to what they're doing. Rather than simply reading from the beginning of page one to the end of an assigned text, experienced readers think about what they're doing as they begin an assignment and as they move through a text. In short, they are in charge of their reading and monitor themselves as they read.

Here are ten things skilled law students do when they monitor their casebook reading:

- (1) Expert law students never (or hardly ever) read without being aware of time;
- (2) Expert law students modify their reading strategies – often on the spot – to fit the task at hand;
- (3) Expert law students develop a hypothesis about an area of reading and about a specific case *before* they actually read the cases;
- (4) Expert law students happily modify a hypothesis if it becomes clear that they were initially wrong;
- (5) Expert law students use common sense to check the validity of their hypotheses by making up questions and hypotheticals as they read – in effect, they “test” themselves as they move through text;
- (6) Expert law students use the reading cues available to them to speed up their reading and the development of hypotheses about a case;

- (7) Expert law students are aware of reading as a “social activity,” and carefully choose whom to “engage with mentally”;
- (8) Expert law students read selectively;
- (9) Expert law students pay attention to their feelings and don’t read when they’re too distracted to understand the material;
- (10) Most importantly, expert law students read for the “main idea.”

(1) **Time is of the essence:** Scratch the surface of any law student, and you’ll find a busy, busy person. Many law students (hopefully, MOST law students) enjoy learning and enjoy intellectual challenges. Despite the fact that learning is inherently interesting to them and that most have been conscientious students in the past, law students soon find that they cannot afford the luxury of immersing themselves in any given subject or in any given assignment to their heart’s content. Rather, even students with the best time management skills are challenged to meet all of their academic and personal responsibilities.

It is typical for students to be assigned anywhere from twelve to twenty-five or more pages of casebook reading a night *in each class*. Not counting legal research and writing assignments, most first year law students meet with three classes on average per weekday. Thus, an average reading load could range from thirty-six to over seventy-five pages of reading on “school nights” – well over 2,000 pages of dense reading a semester.

Despite the high volume of reading assigned, reading cases is not the only thing that law students need to be doing to study successfully. In addition to managing all this reading, students need to attend each and every class with energy. Many students also find outside study groups to be useful¹ and the best students meet with their professors from time to

1. See Dorothy H. Evensen, *To Group or Not to Group: Students’ Perceptions of Collaborative Learning Activities in Law School*, 28 S. ILL. U. L.J. 343 (2004).

time to clarify a question from class or from reading. As the semester wears on, students need to begin to synthesize information for exam review (often choosing to outline material) and they need to save time to practice writing exam answers (a whole skill set unto itself).

Thus, the speed with which students read cases, while still reading with accuracy, becomes a critical factor in their eventual success. Psychologists have known for years that a task will expand to fill the time allotted to it. Thus, if I have all day to clean the house, it will take me all day to do it. However, if I have only a morning to clean the house, I can still get a reasonable amount of house cleaning done – often with little or no sacrifice in the quality of the end result.

Law students can apply this principle to case reading by acknowledging that reading without a time limit is a luxury they can no longer afford. Instead, work within a rational time “budget” the way wise money managers work within a rational financial budget. Start with how much time you have to give the task, just as a wise money manager starts with how much money he or she has to spend, and get your reading done – as best you can – in the time allotted.

You can determine the time limit by dividing your available study time by the length of the assignment. Write down the starting time and the finish time for the assignment, and try your best to stick to your plan. Thus, if I have three cases to read and an hour and a half to read them in, I spend no more than thirty minutes reading and taking notes (including briefing) for each case. If I get off my schedule by even ten minutes per case, I’m already thirty minutes behind. If I get thirty minutes behind in each of two or three more classes, I can easily end up being “short” over two hours of study time at the end of the day. Falling that far behind on a routine basis comes at the cost of being inadequately prepared for class, or at the cost of not maintaining the level of wellness you need in order to stay happy and healthy and to keep your energy at a productive level.

One way to increase the likelihood that you’ll stay on task is to use well-established principles of behavior modification to monitor your

time management as you read. Behavior modification principles teach us that behavior that is reinforced increases, and behavior that is punished decreases. The behavior I want to reinforce is studying in a focused, intense way that keeps me in healthy time limits. The behavior I want to “punish” (or at least not reinforce) is working past rational time limits, or working in a non-productive, unnecessarily time-consuming way. Small things (like a candy lifesaver or a quick mental break) can be strongly reinforcing. Forcing yourself to move on when time is up (even if you didn’t reach your goal) can be an effective “punisher” (and will speed you up unconsciously the next time). If you choose to read a case within a set time limit, train yourself to stick to that time limit and reward yourself when you do. Focus on having gotten as much out of the case as you could in the time allotted – and pick up more information about the case as the learning process continues in class. Don’t lament the fact that you didn’t completely master the case in the time available. Give yourself a pat on the back for doing what the expert readers do – monitor your reading by sticking to the time limits you’ve chosen.²

(2) **Be Strategic and Flexible:** Expert readers never wander willy-nilly into a reading project. Rather, they think about how they will approach their reading. You’ll learn more in the remaining chapters about some of the strategies that expert legal readers use when they approach as-

2. As you choose time limits, assume that approximately two hours of preparation for every hour in class is what a strong student would shoot for on average. Note that only about 1.5 hours of that time could be devoted to reading for class because you have other important study tasks (such as reviewing and synthesizing class notes) to attend to as well. There are occasional days when you might need to go over this time limit (and days where you might be able to complete your work in less time). On average, if you stick to this time limit you will end up doing heavily challenging intellectual work for about fifty hours per week (including the time you are preparing for class, the time you are engaged in class, and the time you study productively with others).

signed casebook reading. With experience, you'll develop additional strategies on your own. For now, it is important to know that you need to develop some strategies. After the first week or so of class, simply opening your casebook and beginning to read – no matter how earnest your effort – is just not going to be enough.

In addition to having reading strategies, expert readers monitor the effectiveness of the strategies they choose to apply as they move through a text. If they are not able to figure out the main idea of the reading, or meet any other purpose they may have for reading, they have enough conscious control of the process to stop what they're doing and try something different.

Similarly, skilled readers are honest with themselves about what they do and don't understand – and make wise decisions about resources they can use to save time to improve their understanding. A skilled reader who comes across a vocabulary word that is unfamiliar, for example, can quickly turn to a dictionary for clarification. Alternatively, the reader might use context cues to figure out the meaning of the word as it is used in the sentence. Similarly, a law student who comes across an unfamiliar term can make a strategic decision about the importance of looking up the word.³ If it is a word that the student might see again and again, then looking it up makes all the sense in the world. Many students designate a place in their notebook or on their laptop to write down new words and their definitions.

Likewise, if the student is at high risk for being called on in class – or knows darned well that he or she WILL be called on in class – it might be a good idea to look up all unfamiliar words. Sometimes, however, a skilled reader (even in law school) might make an educated guess about the meaning of a word in context (being flexible about seeing if the guess

3. Finding the definition of a legal term often requires a specialized legal dictionary. See, e.g., BLACK'S LAW DICTIONARY (8th ed. 2004); BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE (2d ed. 1995).

makes sense as the reading goes on) or take a chance that the word is no longer in common usage and simply isn't important enough to spend time deciphering.

The point is, as you read in your casebook, you will need to develop new reading strategies and to exercise conscious control over the reading choices you make.

(3) **Take a Guess About What You May Learn:** Part of being an active reader is being willing to stick your neck out and take some intellectual risks. Before you begin any reading, you should develop a working hypothesis about the content of the reading. You might be wrong. You might be right. Either way, you'll be engaged.

Whether you realize it consciously or not, you probably already develop a hypothesis about the content of most things you read. As readers develop a hypothesis, they consciously or unconsciously take cues from the context of the reading – the title of the piece, the magazine or book it is in, things they may know about the author. If we're not speculating at all when we read, we're wasting a lot of time.

For example, if the title of an article handed out during law school orientation is "Writing Your Way on to the Law Review," I might speculate that the piece will contain useful tips about serious academic journal writing. If the title, on the other hand, is "Writing Your Way on to the Law Revue," (once I looked up "revue" and realized it was a synonym for a show comprised of humorous musical skits), I might speculate that the piece will contain useful tips for adapting karaoke lyrics to parodies of law school or writing scripts for skits or tag lines for funny photographs of professors. I would certainly guess that I would laugh more reading the second piece than reading the first.

(4) **Be Willing to Abandon Your Hypothesis If You're Wrong:** Of course, once I started reading, I might find that my hypotheses (guesses) about these articles were wrong. It's certainly possible that the "Law Review" piece is one student's humorous parody of experiences with a journal competi-

tion or that the “Law Revue” piece is a serious explanation of the rules for joining the production staff of the end-of-the-year law school talent show.

Whether my initial hypothesis is right or wrong doesn’t matter. I would be doing what an excellent reader should do just by having taken a guess in the first place – and then having enough sense to modify my hypothesis as my reading made it apparent that I was wrong.

This same principle applies to assigned casebook reading. Developing a hypothesis – which you’re willing to modify as you read and then again when you go to class – will save you time and energy as you work through your assignments.

(5) Common Sense Can Help You Develop and Test a Reading Hypothesis: How would I know if my hypothesis is right or wrong? Approach your reading posing your hypothesis as a proposition and then test your proposition as you move through the text. “I’ll bet . . .” is a good phrase to have in mind as you start reading a new section in a casebook or start reading a new case within a section.

As you move through the reading, ask yourself questions that will help you see if you are on the writer’s wavelength. For example, let’s say that I’m reading a cluster of cases about battery. The background reading prepared by the author just before the cases begin explains that battery is a tort that occurs when someone subjects someone else to a “harmful or offensive contact.” Based on this background reading, I begin the first case by hypothesizing (speculating) that it will show me a situation in which a person bringing an action for battery was hurt or offended. In the first paragraph of the case, however, I find that the action was disallowed because the court found there was no “harmful or offensive contact.” I have enough sense to realize I need to change my initial hypothesis. Apparently this case is not going to show me a situation where a person was hurt or offended (or at least not in a way that the court would allow an action for battery), but perhaps the court is going to talk about what does and doesn’t constitute harmful or offen-

sive contact. I begin to think, “Maybe I will learn why this person’s case did *not* constitute battery.”

I now move forward assuming the case will be about a situation where someone was NOT subjected to a harmful or offensive contact, and hoping to learn more about the topic. As I read, I become confused about how a court decides when a contact is “offensive.” I might develop a hypothesis that a contact is “offensive” if the plaintiff was *actually* offended by the contact, not just if he or she *might have been* offended. I would, then, pose some hypotheticals (imaginary situations) that I make up out of my head, like: “So, if I’ve gone to a lot of trouble to get my hair done and someone sprays me with water at the State Fair, then I’d really be offended by the contact and I could recover. BUT, if a teenager was at a party on a beach and got splashed with water and laughed, he would probably NOT be able to recover (because he wasn’t really offended) – even if someone else might have been offended in the same situation.”

As I read further in this case, however, I begin to wonder if this hypothesis (that a plaintiff can recover if he or she is personally offended by an unwanted contact) is accurate. I begin to lose confidence in my hypothesis because it is clear that THIS plaintiff in the case I’m reading was, in fact, personally offended when someone made a peace sign above her head just as a cameraman snapped a group picture at a class reunion. Nonetheless, even though she was offended, the judge did not allow recovery.

Hmmmmm . . . this result is perplexing. If I’m an “engaged” reader, I need to rise to the challenge and modify my hypothesis. I might ask myself a question at this point: “Well, darn. It doesn’t look like someone can recover just because he or she is *personally* offended by an unwanted touching. But the casebook author says that ‘offensive touching’ is a battery. How can this be? I wonder if the key is that someone can recover if he or she was actually offended AND a *reasonable person*, in the same situation, would have been offended, too.” Using the case in my hand, I could then test that hypothesis and see that it would cover the facts of that case – in the end, the court did NOT allow recovery even though this particular individual

was offended because the court believed that a usual reunion-goer would have had a better sense of humor and would NOT have been offended.

(6) Context Cues Can Speed Up Your Reading and Help You Think About What to Anticipate. Casebooks are full (chock full) of all kinds of reading cues that help us formulate initial working hypotheses as well as questions to test our initial propositions. Using these cues will help you read faster and more effectively.

Every casebook has a Table of Contents that puts each case in the larger context of the subject being taught. There are usually running headers across the top of the page that repeat the Section Headings and Subheadings (from the Table of Contents) so you can stay oriented as you read. At the beginning of most new sections, many casebook authors include text that gives useful background information and/or summarizes the principles you will be reading about in detail in the accompanying cases.

In addition to the visual and textual cues provided in the casebook, the fact that cases are often clustered in related groups is helpful, too. When cases are grouped in clusters, one case can give lots of cues about the “main idea” of its companion cases. Finally, casebook authors mercifully include “Notes and Problems” or “Notes and Questions” at the end of each topic section. If you are having trouble figuring out what kinds of questions you should be asking yourself to test the meaning of a case, you can use the Notes, Problems, and Questions provided by the casebook author to jog your thinking and “get engaged” in your reading.

One of the things that sometimes confuses beginning legal readers about cases is that there are so many different “voices” included in a typical opinion.⁴ Unlike a more traditional kind of writing where there is one author presenting one point of view, cases (although authored by a

4. I am grateful to my colleague, Professor Bobbi Boyd, Deputy Director of the Writing and Learning Resources Center at the University of North Carolina School of Law, for these observations about voice.

judge) often include multiple perspectives, multiple potential holdings, multiple lines of precedent, and multiple proposed rules of law before the court ultimately settles on the views it will adopt and the holdings it will reach. Wise readers can save time by paying attention to transitional phrases and other context cues to help them distinguish times when the court is introducing someone else's point of view (say, for example, that of the court below, or that of one of the parties, or that expressed in an older, precedent-setting case) from the times when the decision-making court is making statements that it has adopted as its own.

(7) **Read Selectively.** Not all parts of a case are equally important, and not all parts of a case require the same amount of attention to master. You'll read faster and more effectively if you choose what to focus on and what to skim. Often key transitional phrases can serve as "red flags" to warn you when to slow down. Words like "we hold; plaintiff argues; we fail to understand . . ." can foreshadow important reasoning points in a case. Other common transitional phrases ("the facts are . . ." or "we are asked to decide . . .") can point you to the sections of a case you may need to focus on to complete a brief for class.

(8) **How You Feel About a Case Can Interfere with What You Can Learn From a Case (Unless You Handle Those Feelings Well).** No one comes to law school devoid of past life experiences. Memories of these experiences can be triggered by the facts of the cases we read, or by the values discussed by a court, or by the law itself. These past memories can enhance your reading by adding richness to the text – making it personally meaningful to you. By the same token, if these past experiences and memories evoke strong emotional reactions, those feelings can create "interference" or "noise" that blocks your ability to read the case well. You may be consciously aware of what you are feeling and associations you are making when you read a case, or those associations may occur only at an unconscious level. If you find you are resistant to a case or a concept, or that your energy level suddenly plummets when you read a

case or every time you pick up a certain casebook, take time to consider whether something else may be going on. If you honor what you're feeling by attending to it consciously, you can move on and read the case more objectively – separating the past from the present.

(9) Reading Is a “Social Activity” with Strong Interpersonal Components. Although most of us would think of reading as a solitary activity, reading theorists have come to understand that reading has powerful social connotations. Reading research indicates that readers often think about other people as they read. For example, readers might think, “Have I read enough of this report to get through the upcoming Board meeting?” or “Can I explain these directions to my father?” or “Wow, my friend is sure going to think this is a funny email when I forward it to him.”

In addition to imagining how they will interact with others in relation to whatever it is that they're reading, strong readers also engage in a semi-conscious social dialogue with the author of the text itself as they read: “I'm not sure this author knows as much about nuclear physics as I had hoped. I wonder how long she has worked in this field?” or [to the author of a history text] “You can't really mean that you think the Revolutionary War was caused by the French!?”; or [to a novelist] “Please don't give this story a sad ending;” or “What an incredible description – it makes me feel like I've been there myself.”

This social component of reading has two important implications for law students. First, because the reading of cases is predictably followed by a lengthy class discussion – often in front of seventy-five or more classmates – students can easily get preoccupied with the potential opinions of other students or their professor, rather than focusing on making meaning of the case itself. If a reader is imagining the pressure of the spotlight, the temptation to think within safe boundaries looms large, and the importance of thinking creatively, deeply, and speculatively diminishes.

Second, because the authors of opinions speak with authority and conviction – often arising from actual authority and power – it is diffi-

cult to engage in even an imaginary dialogue with them. Years ago, a student brought me a bumper sticker that was popular at the time (representing a kind of anti-establishment message). The bumper sticker said, in bold, capital letters: "Question Authority." I kept that bumper sticker on my door for years to motivate students to engage in the kind of questioning dialogue that is required for effective case reading.

The importance of reading for the right purpose will be discussed in detail in the next chapter. For now, it is enough to recognize that you read with an awareness that you may eventually share the results of your reading with someone. Don't let the prospect of discussions in large classes loom larger than it should, and don't define the purpose of those discussions incorrectly. Class is there to help you develop and refine a hypothesis about the law – not to test your knowledge of a case. Your accurate reading of the details of a case (often those that are briefed) may be a prerequisite to a rich discussion of the case in class, but your reading purpose is not generally to "get" the case "right." If you find your reading is dominated by a desire to avoid embarrassment in class, consider choosing other imaginary audiences (apart from your peers and the professor in class). For example, you can imagine talking about the case with a family member, a close friend, or the professor in the safety of a one-on-one setting, even if those conversations only rarely occur. Similarly, think about who wrote a case and what your image of that person means to you. Can you give yourself permission to "discuss" a case with the judge who authored it?

(10) Read for the MAIN IDEA: Exceptional readers with experience in a particular field cut to the chase as they read. They look for large themes and important principles in their reading, actively pursuing "the main idea" of a text.⁵ Inexperienced readers, or less proficient readers, instead

5. See MICHAEL PRESSLEY & PETER AFFLERBACH, *VERBAL PROTOCOLS OF READING* 99 (1995).

march with determination through a text – methodically and carefully reading for detail that may be superfluous or unimportant in the end.

The challenge for beginning law students is that they don't have enough experience in the field of law (and law study) to know (at first) what may wind up being superfluous. It helps to know that, in all fields, development of "macropropositions" (the big picture) is dependent on the early development of "micropropositions" (the components of the big picture).⁶ When readers first begin to read in a specialized field, such as law, they have to pay a lot of attention to mastering the "micropropositions" (the sub-parts of the big picture). As readers gain in experience, the macropropositions move appropriately into the foreground and the underlying micropropositions take the supporting role they deserve.

If you ever studied art, you may remember the impressionist era, represented by great artists such as Monet, Manet, Renoir, and Cezanne. During this era, the technique called "pointillism," most widely recognized in the work of Georges Seurat, became popular. You might have seen some of these pictures in museums or in books – one of the most famous shows an idyllic "Sunday Afternoon on the Island of la Grande Jaffe." The landscape is comprised of thousands of small points of paint (purples, blues, oranges) that all blend (when you step back from the painting) to create the wonderful treatment of light and image that characterize that period of art. When you stand close to the painting, all you see are colorful dots. The dots make up a picture. They are not the picture itself.

Reading cases is the same kind of experience. The micropropositions (the dots of paint) are the details of a case that are emphasized in the early days of class. The macropropositions (the "big picture") are the themes, principles, and rules that emerge as we learn to read critically,

6. *Id.*

searching for the main idea of the case in the context of its companion cases and accompanying notes and problems, considering each case as it relates to *this* course. For students searching for the main idea of their reading in a casebook, reading the case in the context of the course (asking, for example, why was *this* case chosen – what does it add to my understanding of this area of law?) is critical.

For students who are new to law study, the focus in the early weeks of class on the component parts of cases (“Ms. Garcia, can you tell us who brought the action in *Pennoyer v. Neff*?” or “Mr. Hunt, can you tell us the question before the court in *Gordon v. Steele*?”) can lead them to believe that identification of these component parts *is* the “main idea” of their reading. It isn’t. Being able to accurately identify the component parts of a case as described in Chapter 2 is a prerequisite step to being able to discuss the case at a deeper, more meaningful level. In the first days and even weeks of class, many professors will focus on the development of students’ ability to read carefully enough to identify these foundational concepts. At this early point, it’s entirely appropriate for students to focus on these details as they read – understanding these details is how the student will eventually have enough cards in his or her hand to play the larger game of legal reasoning. Without them, the next step of reading (looking for the larger themes) can’t be achieved.

Gradually, however, the discussion will shift. You’ll begin to notice over a period of weeks that cases are no longer discussed in excruciating detail, but rather that hypothetical fact scenarios begin to dominate class discussions – shifting the focus to the outer boundaries of rules, to the commonalities and distinctions among related cases, and to the questions not expressly answered by the court in any of the cases studied.

Over the years, I have found another metaphor to the world of art helpful as this shift occurs. If you ever studied sculpture, or know someone who sculpts, you may know that people who truly appreciate sculpture are as intrigued by the “space in the sculpture” (the shapes created

in the open area around the sculpture) as they are by the sculpture itself. Relating that image to law, you will find that, over time, your professors will take for granted that you can identify the “sculpture” of a case (the things you can touch and prove about a case – frequently the things we brief). What they really enjoy – and what expert legal reasoners consider to be the “main idea” of advanced casebook reading – is the “space” in the case (the things that are “indeterminate” about the text, the questions not yet answered, the facts not dealt with adequately).

Making this shift from details (micropropositions) being the “main idea” of your reading to themes and patterns (macropropositions) becoming the “main idea” of your reading happens gradually. As long as you continue to read actively, and don’t become complacent when you get good at understanding the tangible aspects of cases, you’ll make the shift successfully.

7. Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 172 (1993).